

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Douglas A. Kelley, in his)	File No. 19-cv-1756
capacity as the Trustee of the)	(WMW)
BMO Litigation Trust,)	
)	
Plaintiff,)	St. Paul, Minnesota
)	October 12, 2022
vs.)	12:19 p.m.
)	
BMO Harris Bank N.A., as)	
successor to M&I Marshall and)	
Ilsley Bank,)	
)	
Defendant.)	

BEFORE THE HONORABLE WILHELMINA M. WRIGHT
UNITED STATES DISTRICT COURT JUDGE

(JURY TRIAL PROCEEDINGS - VOLUME I)

Proceedings reported by certified court reporter;
transcript produced with computer.

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IN OPEN COURT

(JURY NOT PRESENT)

THE COURT: We have some matters to take up as it relates to the opening statements and the evidence that has been objected to. It's been, as I understand it, with regard to -- I am just trying to make sure. So we will begin with Ms. Momoh's e-mail that has laid out the positions of the parties or the area of controversy, let's say.

So the Court will -- understands that Issue 1, which is the process for cause, dismissal of potential jurors, questioning witnesses at sidebar, that is moot. As well as objections as to proposed depositions, I understand that that is moot. Is that correct?

MR. GLEESON: Yes.

THE COURT: Okay. So then the third issue, the objection is sustained.

The fourth issue as to plaintiff's opening and investor culpability, that is also sustained.

I believe that's all we need to address with regard to that set of objections.

Then plaintiff's objections to defendant's opening PowerPoint is next.

MR. MARDER: Your Honor, with respect to the issue

1 of investor culpability, could I just be heard briefly on
2 that?

3 THE COURT: Why do you need to be heard?

4 MR. MARDER: Because, Your Honor, the evidence in
5 question, if I'm understanding the ruling, doesn't relate to
6 investor culpability at all. The slide is not directed to
7 investor culpability. This is a critical issue in the case
8 that's going to affect all of the evidence going forward,
9 and I would just like an opportunity to be heard just for
10 three minutes so I can explain the nature of the proof and
11 why it doesn't relate to investor complicity at all.

12 THE COURT: I'm trying to understand -- let me
13 just make sure I am tracking. I have before me an e-mail to
14 "Dear David and Chambers" and to "Dear Chambers." Which
15 matter are you speaking to?

16 MR. MARDER: It was my understanding that there
17 were some objections to the opening slides.

18 THE COURT: Right. And so there's numbers -- I
19 have two e-mails, one from Ms. Momoh and one from Mr. Reif.
20 Are you speaking to the issues with regard to Ms. Momoh's
21 e-mail or Mr. Reif's e-mail?

22 MR. MARDER: I'm sorry, Your Honor. I don't have
23 those e-mails in front of me. I'm not sure which -- it's
24 Ms. Momoh's e-mail, sorry.

25 THE COURT: Ms.?

1 MR. MARDER: Ms. Momoh's e-mail, yes.

2 THE COURT: Okay. And which issue are you
3 addressing?

4 MR. MARDER: There was a slide in particular where
5 we had --

6 THE COURT: I have the e-mail. I am tracking this
7 e-mail and this document, so you need to find the document
8 and make a coherent argument as it relates to this document.
9 It's the October 12th, 2022, 6:55 a.m. e-mail.

10 MR. MARDER: Yes, Your Honor. It's Ms. Momoh's
11 e-mail, and it's Point Number 4.

12 THE COURT: Okay.

13 MR. MARDER: So if I could address that slide?
14 That is what I was requesting.

15 THE COURT: You may make a record.

16 MR. MARDER: Thank you. Your Honor, the slide in
17 question has to do with the felony conviction of an
18 individual named Frank Vennes. The conduct that gave rise
19 to that conviction occurred back in the 1980s, and the
20 conduct is not the conduct in this case.

21 The exhibit that discusses the conduct and the
22 prior convictions is an exhibit that is actually on the
23 defendant's exhibit list that they intend to offer.

24 The issue and the conviction has nothing to do
25 with the issue of investor complicity. We have no interest

1 in establishing that Mr. Vennes was complicit. That's not
2 the purpose of getting that conviction into evidence.

3 The reason we want to put that conviction into
4 evidence is because it is directly relevant to the knowledge
5 of the bank. It is one of the critical pieces of evidence
6 that we rely upon to establish that the bank was
7 knowledgeable.

8 You may recall, Your Honor, that the whole theory
9 of our case is that the bank understood what the business
10 model was, saw the activity in the account, and understood
11 that the activity in the account was inconsistent with a
12 business model.

13 The very person who came over to BMO Bank and
14 explained the business model to them was a convicted felon
15 who had been convicted of money laundering. So it is our
16 position that the fact that Mr. Vennes came over to the
17 bank, explained the nature of the investment, and that the
18 bank knew that that individual was a convicted money
19 launderer is very strong evidence that the bank had
20 knowledge. It is one of the pieces of circumstantial
21 evidence that we rely upon in support of our case.

22 So, Your Honor, this evidence has nothing to do
23 with the issue of investor complicity. We are not putting
24 it on to prove or disprove investor complicity. We are
25 merely putting it on to establish that the bank should have

1 been on alert even more -- should have been on alert because
2 the person that they were dealing with they knew to be a
3 felon who had been convicted of money laundering, and that's
4 the purpose of establishing the conviction.

5 And this evidence is going to come not just for
6 the opening statement, but it's a major part of our case
7 that we are going to be relying on going forward. So I just
8 wanted to make sure that I could be heard on that and that
9 Your Honor understood the issues.

10 THE COURT: Thank you.

11 Does opposing counsel wish to be heard?

12 MR. MOHEBAN: Keith Moheban on behalf of the bank.
13 So I don't know if you have the benefit of the actual slide,
14 but I'm holding it up what was -- what we're talking about.

15 THE COURT: Are we -- I understood that this
16 related to the slide deck for openings.

17 MR. MOHEBAN: Correct.

18 THE COURT: Is that correct?

19 MR. MOHEBAN: This is part of plaintiff's opening
20 slides that they're proposing to use. We have objected to
21 it, and there's several layers of objection.

22 The first one is it depicts Christopher Flynn, who
23 is an M&I Bank employee, who was never convicted or charged
24 of anything, in a slide with Mr. Vennes, who was convicted
25 both back in the '80s and for his role in the Petters

1 scheme. And they put the two pictures side by side, and
2 they list Mr. Vennes as a convicted felon. And they're
3 trying to make this look like mugshots to suggest that
4 Mr. Flynn was already -- was also convicted, which first of
5 all isn't true, and I think your rulings have said that
6 you're not going to get into whether people were exonerated
7 or convicted.

8 So it's -- on the 403 basis, it sends an unfair
9 and improper message to the jury. They can make arguments
10 about what they want to do without trying to make it look
11 like Mr. Flynn is also convicted along with Mr. Vennes.

12 The more fundamental issue is Mr. Vennes -- he
13 was, in fact, convicted in the Petters case. He was
14 convicted in a prior case. And what the implication is here
15 is that if Mr. Flynn, an M&I Bank employee, years ago, 2002,
16 had one meeting with Mr. Vennes, that somehow that that's
17 probative of his state of mind in terms of being complicit
18 in the fraud.

19 So it's an extremely attenuated argument, and it's
20 also one of these things where you have consistently ruled
21 that what other people thought or other people concluded
22 isn't probative of what the M&I Bank people thought, and
23 here, you know, they're trying to do that with this slide
24 and that's why we've objected to it.

25 MR. MARDER: If I could just address that, please,

1 Your Honor? First of all, deal with the second point.

2 We're not trying to ascertain what some people thought based
3 on what other people thought. We're ascertaining what the
4 bank should have known based on the fact that the person who
5 was pitching this investment to them was a convicted money
6 launderer.

7 Second of all, Your Honor, the slide itself is not
8 misleading. When it comes up, what you will see is that it
9 will show that Mr. Flynn met with Mr. Vennes, and then it
10 explains very clearly that Mr. Vennes is the one who was
11 convicted. We don't argue nor do we assert that Mr. Flynn
12 was convicted of anything. That's not the purpose of the
13 slide, and that's not what the slide shows.

14 THE COURT: What is the purpose of the slide?

15 MR. MARDER: The slide is to show that Mr. Flynn
16 met with Mr. Vennes; that Mr. Vennes was a convicted money
17 launderer; and that Mr. Vennes learned about the whole
18 business model from someone who was a convicted money
19 launderer, and that is a critical piece of evidence to show
20 that he had knowledge or at least was willfully blind to the
21 scheme. So it has nothing to do with the issue of investor
22 complicity.

23 THE COURT: Okay. As to the issue that is before
24 me, which is what is in the opening, my ruling stands.

25 MR. MARDER: We can't use the slide, but can we

1 say that Mr. Flynn met with Mr. Vennes and that Mr. Vennes
2 was a convicted felon without putting up the slide?

3 THE COURT: Is there --

4 MR. MARDER: I thought you said that that was
5 acceptable.

6 MR. MOHEBAN: I mean, Your Honor, the evidence is
7 that Mr. Vennes met with Mr. Flynn, wanted the bank to give
8 him a loan, and they declined to give him a loan. They did
9 it expressly because they knew that Mr. Vennes had a
10 criminal conviction. So how this is probative of anything,
11 it's really a mystery to us.

12 MR. MARDER: Your Honor, as I've said, it's
13 probative because the person who taught them the scheme and
14 explained to them how the investments work was a convicted
15 felon; and the fact that they met with someone like that is
16 probative.

17 So we can pull the slide, but throughout our
18 entire case, the jury is going to hear about this,
19 especially because the exhibit is one of the defendant's
20 exhibits, Your Honor.

21 THE COURT: You've addressed the issue, then. It
22 sounds like you said you're conceding that you can pull the
23 slide. The slide will be stricken.

24 MR. MARDER: The slide will be stricken,
25 Your Honor; but I just want to make sure that this isn't a

1 broader ruling that we can't mention --

2 THE COURT: I have not made a broader ruling. I
3 was addressing the slide.

4 MR. MARDER: Okay. Thank you, Your Honor.

5 The other issue is that --

6 THE COURT: What other issue?

7 MR. MARDER: With respect to the other issue that
8 they raised, can I address that as well?

9 THE COURT: I don't know what you are talking
10 about.

11 MR. MARDER: Sure, Your Honor. Number 3 on
12 Ms. Momoh's e-mail.

13 THE COURT: Okay.

14 MR. MARDER: That has to do with this e-mail from
15 Mr. Vanderheyden, and let me explain that. Again, this
16 e-mail that they're concerned about is an exhibit that is on
17 their exhibit list that they plan to offer into evidence.

18 This e-mail does not suggest anything about the
19 conduct of counsel for BMO Bank, nor do we intend to say in
20 our opening that it reflects or says anything about the
21 conduct of the counsel for the bank.

22 The reason that this document is critical,
23 Your Honor, is that we are putting it in as part of the
24 spoliation case. And as you know, and from all the prior
25 filings, there was this issue in 2014 with these tapes that

1 were discovered, and the tapes show that -- I'm sorry -- the
2 tapes that had evidence on them which were destroyed.

3 And so this document shows that this employee of
4 the bank found the tapes that were destroyed and he's
5 reporting that to the lawyer. So this e-mail has to do with
6 the conduct of BMO's employee. We are not putting it in to
7 say anything about the conduct of counsel, and there's
8 nothing in the e-mail that suggests counsel engaged in any
9 misconduct.

10 The last point I would like to make about this,
11 Your Honor, and this is even more important for the broader
12 case itself, is that in Ms. Momoh's e-mail, she said that
13 you ruled that we had excluded from the case all evidence of
14 counsel's conduct, and that's not quite what you said in
15 your order, Your Honor. What you said is that we could not
16 call BMO's counsel as a witness, but you did not say that we
17 could not address anything to do with their conduct.

18 And such a ruling, Your Honor, I would
19 respectfully submit would be grossly unfair. As you recall,
20 it was BMO that moved the Court to put in rebuttal evidence
21 relating to spoliation. After Your Honor said that the
22 primary issue in the case should be whether or not the
23 documents themselves were favorable or unfavorable, they
24 came back and argued that they were allowed to put in
25 evidence broader than that; that it could relate to whether

1 there was an innocent mistake and whether they engaged in
2 good faith.

3 Now, if they're going to make that argument that
4 they engaged in good faith, we need to be free to come back
5 and rebut that, and a critical portion of our proof there is
6 the conduct of counsel. And it's not just me saying this,
7 Your Honor. This has been in multiple court orders.

8 THE COURT: Counsel, we are talking about
9 plaintiff's opening.

10 MR. MARDER: Yes.

11 THE COURT: Okay? We are not talking about the
12 evidence. I'm talking about what is being used during the
13 opening.

14 MR. MARDER: Okay. Well, Your Honor, this
15 particular e-mail is not being used for the topic that BMO's
16 counsel has suggested, and specifically we're not going to
17 say anything about BMO's counsel's conduct. It's merely to
18 show that the employee of BMO Bank found these materials in
19 2014, and these are the very same materials that contained
20 the tapes that we not only allege, but have proved were
21 destroyed and contained nonduplicative information.

22 THE COURT: Yes, please, Counsel. Who is
23 responding? One counsel.

24 MR. GLEESON: Judge, with respect, we need clarity
25 on this issue with respect to slides in an opening, oral

1 statements in an opening, the evidence. We had a pretty
2 clear understanding from your ruling dated September 29th
3 that for very good reason, there was insufficient probative
4 value regarding -- and I am reading from page -- the bottom
5 of page 9 -- regarding the conduct and credibility of BMO
6 Harris' counsel. And it doesn't matter in the slightest if
7 conduct of counsel or credibility of counsel is raised
8 because they're on the witness stand or because they elicit
9 it from some other source of evidence. It is disabling for
10 counsel who are proceeding as advocates in the case.

11 And, with respect, we believe the Court made a
12 ruling, and we think we need a hard-and-fast rule that
13 counsel's conduct and credibility is out of the case. You
14 said there would be limited testimony. We are going to have
15 one witness about the backup tapes.

16 And, Judge, while I'm on the, topic, I also
17 think --

18 THE COURT: Let me just address this, because we
19 are not going to allow this to expand. I am addressing the
20 objections that have been presented to me in the e-mail
21 regarding the PowerPoint for openings. The objection is
22 sustained as to Issue 3 that's on that e-mail to me.

23 MR. GLEESON: Yes.

24 THE COURT: Does everyone know what e-mail I am
25 talking about and what the issue is?

1 MR. GLEESON: I think it's the Adine Momoh e-mail,
2 and it's our objection regarding plaintiff's opening on
3 spoliation.

4 THE COURT: Okay. So I have ruled.

5 MR. GLEESON: Thank you, Judge.

6 THE COURT: Now, there's another e-mail.

7 MR. GLEESON: There is.

8 THE COURT: And so let's just take up each of
9 those issues. Does counsel wish to be heard as to Issue 1?
10 And please be brief. I am very familiar with the issues. I
11 am prepared. You may make a quick record.

12 MR. MARDER: Thank you, Your Honor. As to the
13 issues that are raised in our e-mail, our concern is the
14 same on each one, which is that they step over the line from
15 an opening statement to an opening argument.

16 With respect to the first slide, which is Slide
17 Number 6, where it says M&I did not make PCI unable to pay
18 its investors, that is a dispute over causation in this
19 case. They're not pointing to a particular document. It is
20 just a lawyer argument.

21 The second slide that we have an issue with is
22 page 24 where they have this sports car and the Vikings
23 tickets and two million dollar checks and say, "Benefits you
24 would have expected to see." Once again, Your Honor, this
25 has absolutely nothing to do with any evidence in the case.

1 There are no sports cars or Vikings tickets that have
2 anything to do with BMO Bank, and this is purely a legal --
3 an argument by the attorneys that is not tied to any
4 evidence.

5 Finally, Your Honor, they have a slide, Number 47,
6 which addresses the issue of spoliation; and in that
7 e-mail -- in that slide, there are several problems. First
8 of all, they argue that no document suggests that any M&I
9 employee knew about the Ponzi scheme. That is extremely
10 unfair and misleading, Your Honor, given that the Court has
11 ruled that there's been a substantial destruction of
12 documents. So for them to say that there's no document
13 suggesting something, when, in fact, they destroyed
14 documents which could have suggested something, is
15 misleading and unfair in light of the Court's spoliation
16 orders.

17 The other problem with the e-mail is that it says
18 2 point -- I'm sorry. The other problem with the slide is
19 that it says 2.7 million e-mails from restored backup tapes,
20 including Jambor's e-mails, and that makes it sound as if
21 all of Mr. Jambor's e-mails have been produced. In fact,
22 it's very clear that many e-mails were not produced. We
23 have multiple e-mails from Mr. Jambor who were produced by
24 third parties that were not produced by BMO. So we know it
25 to be the case that Mr. Jambor's e-mails were not included.

1 So the document itself is inconsistent with the spoliation
2 order, and we believe it is unfair and misleading.

3 MR. GLEESON: Briefly, Judge, with respect to the
4 first objection, which is to a slide that says, "M&I did not
5 make PCI unable to pay its investors," that's what this case
6 is about, is an allegation that that's what we did. There's
7 nothing wrong with that statement. It's supported. It will
8 be supported by expert testimony, and we -- our damages
9 expert -- excuse me, the cross of their damages expert will
10 support that, and it is a causation issue.

11 That's the whole central issue in the case is
12 whether M&I did not make PCI unable to pay its investors.
13 We're going to prove that, and we should be, I respectfully
14 suggest, permitted to say it in our opening. There's
15 nothing inappropriate with presenting components of our
16 argument and components of the evidence we'll elicit in that
17 way.

18 With respect to the benefits you would have
19 expected to see, we are going to elicit expert testimony to
20 that effect, and we do intend to argue to the jury, we think
21 it's extremely probative, that the absence of evidence, such
22 as, tickets to games, sports cars, checks, we think the
23 absence of evidence is probative to the absence of M&I's
24 liability or BMO's liability through M&I in this case.

25 Third, these are just absolutely factually true

1 documents -- true statements. No document suggests that any
2 M&I employee knew about the Ponzi scheme. We understand
3 that our adversaries will be permitted to argue the reason
4 for that is there was document destruction. They can do
5 that. But it's factually true there's no document that
6 suggests M&I employee knew about the Ponzi scheme.

7 It's also factually true that the Ed Jambor's
8 e-mail box was saved. And, again, they're free to argue
9 that there might have been deleted e-mails in that box.
10 We're not suggesting otherwise. But it's a probative fact
11 with regard to the prejudice suffered by Mr. Kelley, if any,
12 from the backup, from the destruction, the erasure of the
13 backup tapes.

14 That's all I have, Your Honor, unless you have a
15 question.

16 THE COURT: I do not.

17 MR. GLEESON: Thank you.

18 MR. MARDER: I have nothing further, Your Honor.

19 THE COURT: So I am ready to rule on those
20 objections as well.

21 The objection as to the first issue is sustained.

22 I sustain the objection as to the second issue,
23 which is the PDF at page 27. The first issue was at page 3.

24 And then as to the third issue at PDF 51, that
25 objection is sustained as well.

1 And so we will proceed with our openings with the
2 rulings -- consistent with the rulings.

3 MR. GLEESON: Judge, I have an application. Do
4 you prefer I make it after the --

5 THE COURT: I didn't hear you.

6 MR. GLEESON: Sorry. I have an application I
7 would like to make. Would you prefer I make it -- and I
8 want to make it before the opening statements. Would you
9 prefer I wait until after the lunch hour?

10 THE COURT: You may make it now.

11 MR. GLEESON: I'm going to -- this is -- enlarges
12 on our conversation at sidebar. We are mindful. I heard
13 the Court say you're going to give jury instructions, but I
14 want to make a little more fulsome application for a more
15 fulsome corrective curative instruction based on the voir
16 dire by Mr. Anthony.

17 In that voir dire, he said multiple things that
18 are just flat-out wrong and prejudicial. I addressed some
19 of them, but if the Court will bear with me. He said the
20 question is: Did the bank see something suspicious that it
21 needed to do something about? That's not the question.
22 It's emphatically not the question.

23 The Court knows that opening statements, and
24 before opening statements, voir dire, make impressions that
25 are not indelible, but they're important and they stick. In

1 his voir dire, this is a case in which the fact that the
2 beneficiaries, the recipients of the damages that Mr. Kelley
3 seeks, will be hedge funds whose principals went to prison
4 for conspiring with Tom Petters, that's out of the case.
5 But what's now in the case is that the recipients are
6 sympathy -- or teachers and unions, and that's just
7 fundamentally wrong. What this case is about is about harm
8 to PCI.

9 Those teachers, those charities, they can sue on
10 their own. That's what the recent case from the Eighth
11 Circuit said. This is a case that's not brought on their
12 behalf. It's brought for harm to PCI, and that was -- that
13 is a fundamental baseline proposition of this case that
14 Mr. Anthony just blew out of the water by saying one other
15 completely erroneous fact is that the trustee -- that was
16 asserted to this panel was that the trustee doesn't get a
17 dollar from this. Of course he does. He's gotten \$6
18 million. He gets paid out of the proceeds of his successful
19 lawsuits.

20 The other -- another dimension to this is sending
21 a message to the community is just -- it's just wrong.
22 There's no courtroom in which that's appropriate. It's to
23 decide the factual issues before -- that these two parties
24 have, not to send messages.

25 And, lastly, Judge, there is no courtroom in

1 America where a lawyer can properly say, He's from New York,
2 so he doesn't know where Oakdale [sic] is. That's an appeal
3 to prejudice. I think that's what it must be. Maybe
4 Mr. Arnold [sic] can speak for himself. There's no
5 courtroom in America where that's appropriate.

6 For that reason, I ask the Court to give the
7 following curative instructions before opening statements:

8 First, what attorneys say in voir dire is not
9 evidence.

10 Second, any legal principles they mentioned are
11 not law. You'll get the law from me, from Judge Wright.

12 Third, the question in this case is not did the
13 bank see something suspicious that it needed to do something
14 about. That's a complete misdirection about what this case
15 is really about. And I would ask you to say, That's not the
16 question. I will tell you what the question is when I give
17 you my instructions.

18 Third, I would ask the Court to say, PCI is suing
19 for damage to PCI. It is not bringing this claim on behalf
20 of charities or teachers or any other people. They can
21 bring their own claims if they have them.

22 And, lastly, I ask the Court to say, It is
23 entirely irrelevant where the lawyers are from, and it was
24 improper for Mr. Anthony to suggest otherwise.

25 Thank you.

1 THE COURT: Is there any response that needs to be
2 made at this time?

3 MR. ANTHONY: Well, since I was the subject of the
4 remarks, I probably should respond, Your Honor, but briefly.

5 One of my responses in the voir dire was to
6 counsel for the bank saying, and I think I pointed it out
7 when he said, you know, this case is about the claim that
8 the bank participated in the Ponzi scheme. That's not what
9 this case is about. And that's what their defense is, that
10 the bank didn't participate in the Ponzi scheme. And the
11 claim is that the bank was aware of information -- of
12 suspicious activity that it had a duty to act on, and those
13 are the issues drawn in the case.

14 And I think it was a fair comment in response to
15 what he said to point out what we thought the case was
16 about. I think this is an overly dramatic response to my
17 taking on their mischaracterization of what the case is
18 about.

19 I think you've already said you're going to give
20 the instructions. You are going to tell the jury what the
21 lawyers say is not evidence. They are going to hear the
22 evidence. Opening statements will put everything in
23 context, and perhaps we can put behind us these squabbles
24 and skirmishes. Thank you, Your Honor.

25 THE COURT: Counsel, we will take our recess now.

1 I will come back with the instructions and we will proceed
2 with the trial.

3 MR. ANTHONY: What time, Your Honor? How much
4 time would you like us to have for lunch?

5 THE COURT: The jury is returning at 1:30.

6 MR. ANTHONY: Thank you, Your Honor.

7 THE COURT: And so counsel should be ready to
8 proceed at 1:30.

9 (Recess taken at 12:49 p.m.)

10 * * * * *

11 (1:39 p.m.)

12 **IN OPEN COURT**

13 **(JURY PRESENT)**

14 THE COURT: You may be seated. Good afternoon.

15 Women and Men of the Jury, I will now give you
16 some instructions about this case and about your duties as
17 jurors. At the end of the trial I will give you more
18 instructions. I may also give you instructions during the
19 trial. All instructions, those I give you now and those I
20 give you later, are equally important and you must follow
21 them all.

22 First, you must leave your cell phone and other
23 wireless communication devices in the jury room during
24 trial. You may use them only during breaks.

25 However, you will not be able to have cell phones

1 in the jury room during deliberations. And if you bring
2 your cell phone with you on those days during deliberations,
3 you will be required to give your cell phone to the
4 courtroom deputy just before you start to deliberate and it
5 will be returned to you when your deliberations are complete
6 for the day.

7 This case is brought by Plaintiff Douglas A.
8 Kelley as the trustee of BMO Litigation Trust against
9 Defendant BMO Harris Bank, N.A., who will be referred to
10 throughout the trial as BMO, the bank, or defendant.

11 Mr. Kelley, who will be referred to throughout the
12 trial as the trustee or plaintiff is bringing claims on
13 behalf of a company called Petters Company, Incorporated,
14 which I and the parties will refer to as PCI.

15 The case arises out of a type of fraud that is
16 popularly known as a Ponzi scheme. Tom Petters and his
17 co-conspirators, including Robert White and Deanna Coleman,
18 carried out the scheme over a period of approximately
19 14 years, ending in late 2008.

20 Generally speaking, and you will hear much more
21 about these facts during the course of trial, Petters and
22 his co-conspirators induced lenders to loan billions of
23 dollars to PCI by offering to pay interest on the money lent
24 to PCI and promising that the loans would be used to
25 purchase consumer merchandise from wholesalers, which would

1 then be sold to big-box retailers at a profit.

2 However, it was all a fraud. There were no
3 purchases of merchandise. There were no sales to retailers.
4 Instead, Petters and his co-conspirators diverted the
5 lenders' funds for other purposes. They paid off others who
6 assisted in the fraud, they took some of the money for
7 themselves, and they used the vast majority of the money to
8 pay off loans from earlier lenders.

9 PCI had a bank account at Marshall & Ilsley Bank,
10 also known as M&I Bank, that plaintiff alleges was used as
11 part of the fraud, which BMO disputes. M&I is now part of
12 BMO.

13 Petters, White, and Coleman were arrested in 2008
14 and eventually convicted of crimes in connection with the
15 Ponzi scheme and sentenced to prison.

16 PCI filed for bankruptcy on October 11th, 2008.
17 Plaintiff became trustee for PCI and eventually the
18 plaintiff in this case through the bankruptcy process.

19 Plaintiff asserts four claims or counts against
20 BMO.

21 Count I alleges that BMO violated a law called the
22 Minnesota Uniform Fiduciaries Act.

23 Count II alleges that BMO owed fiduciary duties to
24 PCI and breached those duties.

25 Count III alleges that BMO aided and abetted

1 Petters or associates' fraud.

2 Count IV alleges that BMO aided and abetted
3 Petters or his associates' breach of their fiduciary duties.

4 For its part, BMO denies liability for any of
5 plaintiff's claims. In addition, BMO asserts, in response
6 to plaintiff's claims, a number of what are known as
7 affirmative defenses to liability, which I will instruct you
8 on later.

9 The other major dispute between the parties
10 relates to whether PCI was damaged by defendant and, if so,
11 the amount of the damages.

12 You are here to resolve these disputes of fact
13 between the parties. Based on the evidence in the case and
14 with the legal framework that I will provide for you, you
15 will resolve the factual disputes that these parties have
16 brought into this Court and those findings will determine
17 whether plaintiff is entitled to relief from defendant.

18 Now, don't be concerned now about the precise
19 nature of plaintiff's allegations, BMO's responses, or the
20 affirmative defenses. After you have heard all the evidence
21 and before your deliberations, I will give you extensive
22 detailed instructions regarding the elements that plaintiffs
23 must prove to prevail on his claims. And I will also give
24 you instructions regarding the elements BMO must prove to
25 prevail on its affirmative defenses.

1 It will be your duty to decide from the evidence
2 whether the plaintiff is entitled to a verdict against the
3 defendant. Your duty is to decide what the facts are from
4 the evidence. You are allowed to consider the evidence in
5 light of your own observations and experiences. After you
6 have decided what the facts are, you will have to apply
7 those facts to the law, which I give you in these and other
8 instructions. That is how you will reach your verdict.

9 Only you will decide what the facts are. However,
10 you must follow my instructions, whether you agree with them
11 or not. You have taken an oath to follow the law that I
12 give you in my instructions.

13 In deciding what the facts are, you may have to
14 decide what testimony you believe and what testimony you do
15 not believe. You may believe all of what a witness says or
16 only part of it or none of it.

17 In deciding what testimony to believe, consider
18 the witness's intelligence, their opportunity to have seen
19 or heard things they testify about, their memories, any
20 reasons they might have to testify a certain way, how they
21 act while testifying, whether they said something different
22 at another time, whether their testimony is generally
23 reasonable, and how consistent their testimony is with other
24 evidence that you believe.

25 Now, do not let sympathy or your own likes or

1 dislikes influence you. The law requires you to come to a
2 just verdict based only on the evidence, your common sense,
3 and the law that I give you in my instructions and nothing
4 else.

5 And nothing that I say or do during this trial is
6 meant to suggest what I think of the evidence or what I
7 think your verdict should be.

8 Now, when I use the word "evidence," I mean the
9 testimony of witnesses, documents, and other things that I
10 receive as exhibits, facts that I tell you that the parties
11 have agreed are true, and any other facts that I tell you to
12 accept as true.

13 Now, some things are not evidence, and I'll tell
14 you now what is not evidence.

15 Lawyers' statements, lawyers' arguments, lawyers'
16 questions and comments are not evidence.

17 Documents or other things that might be in court
18 or talked about but that I do not receive as exhibits are
19 not evidence.

20 Objections are not evidence. Lawyers have a
21 right, and sometimes a duty, to object when they believe
22 something should not be part of the trial. Do not be
23 influenced one way or the other by objections.

24 If I sustain a lawyer's objection to a question or
25 an exhibit, that means the law does not allow you to

1 consider that information. When that happens, you have to
2 ignore the question or the exhibit and you must not try to
3 guess what the information might have been.

4 Now, testimony and exhibits that I strike from the
5 record or tell you to disregard are not evidence and you
6 must not consider them.

7 And anything you see or hear about this case
8 outside the courtroom is not evidence and you must not
9 consider it unless I explicitly and specifically tell you
10 otherwise.

11 Also, I may tell you that you can consider a piece
12 of evidence for one purpose only and not for any other
13 purpose. If that happens, I will tell you what purpose you
14 can consider the evidence for and what you are not allowed
15 to consider it for.

16 You need to play close attention when I give an
17 instruction about the evidence that you can consider only
18 for certain purposes because you might not have that
19 instruction in writing later in the jury room.

20 Now, some of you have heard the terms "direct
21 evidence" and "circumstantial evidence." You should not be
22 concerned with those terms since the law makes no
23 distinction between the weight to be given to direct and
24 circumstantial evidence.

25 Now, during the trial I will sometimes need to

1 talk privately with the lawyers. I may talk with them here
2 at the bench while you are still in the courtroom, we call
3 it our sidebar, or I may call a recess and let you leave the
4 courtroom while I talk to the lawyers. Either way, please
5 understand that while you are waiting, we are working.

6 We have these conferences to make sure that the
7 trial is proceeding according to the law and to avoid
8 confusion or mistakes. We will do what we can to limit the
9 number of these conferences and to keep them as short as
10 possible.

11 At the end of trial, you must make your decision
12 based on what you recall of the evidence. You will not have
13 a written copy of the testimony to refer to. Because of
14 this, you have to pay close attention to the testimony and
15 other evidence as it's presented here in the courtroom.

16 If you wish, however, you may take notes to help
17 you remember what witnesses said. If you do take notes, do
18 not show them to anyone until you and your fellow jurors go
19 to the jury room to decide the case after you have heard and
20 seen all of the evidence. And do not let note -- taking
21 notes distract you from paying close attention to the
22 evidence as it is presented.

23 The courtroom deputy will provide each of you with
24 a pad of paper and a pen or pencil. At each recess you may
25 leave them at your seats. When you leave at night, your

1 notes will be locked up and returned to you when you return.
2 When the trial is over, your notes will be destroyed. They
3 will not be read by anyone other than you; not me, not
4 anyone other than you.

5 Now, Jurors, to make sure that the trial is fair
6 to all parties you must follow these rules:

7 First, do not talk or communicate among yourselves
8 about this case or about anyone involved in it until the end
9 of the case when you go to the jury room to consider your
10 verdict.

11 Second, do not talk with anyone about this case or
12 about anyone involved in this -- or involved with it until
13 the jury -- I'm sorry, until the trial has ended and you
14 have been discharged as jurors.

15 Third, when you are outside the courtroom, do not
16 let anyone tell you anything about the case or about anyone
17 involved with it until the trial has ended and your verdict
18 has been accepted by me. If someone tries to talk to you
19 about the case during the trial, please report it to the
20 courtroom deputy.

21 Fourth, during the trial do not talk with or speak
22 to any of the parties, the lawyers, or the witnesses in this
23 case, not even to pass the time of day. It is important not
24 only that you do justice in this case, but that you also act
25 accordingly. If a person from one side of the lawsuit sees

1 you talking to a person from the other side, even if it's
2 just about the weather, that might raise a suspicion about
3 your fairness.

4 So when the lawyers, the parties, and the
5 witnesses do not speak to you in the halls, on the elevator
6 or the like, you must understand that they are not being
7 rude. They know they are not supposed to talk to you while
8 the trial is going on and they are just following the rules.

9 Fifth, you may need to tell your family, close
10 friends, and other people that you are part of this trial.
11 You can tell them when you have to be in court and you can
12 warn them not to ask you about this case, not to tell you
13 anything they know or they think they know about this case,
14 not to talk to you about this case in front of you or talk
15 about this case in front of you.

16 But you must not communicate with anyone or post
17 information about the parties, the witnesses, the
18 participants, the claims, the evidence, or anything else
19 related to this case.

20 You must not tell anyone anything about the jury's
21 deliberations in this case until after I accept your verdict
22 or until I give you specific permission to do so.

23 If you talk about the case with someone besides
24 other jurors during deliberations, it looks as if you might
25 have decided the case or that you might be influenced in

1 your verdict by their opinions, and that would not be fair
2 to the parties and it might result in the verdict being
3 thrown out and the case having to be tried over again.

4 Now, during the trial, while you are in the
5 courthouse and after you leave for the day, do not give any
6 information to anyone by any means about the case.

7 Now, sixth, do not do any research on the
8 internet, in libraries, newspapers or otherwise. And do not
9 investigate this case on your own. Do not visit or view any
10 place discussed in the case, and do not use the internet or
11 other means to search for or view any place discussed in the
12 testimony. Also, do not look up any information about this
13 case, about the law, or about the people involved, including
14 the parties, the witnesses, the lawyers, or me, the judge.

15 Seventh, do not read any news stories or internet
16 articles or blogs that are about the case or about anyone
17 involved with it. Do not listen to any radio or television
18 reports about the case or about anyone involved with the
19 case. In fact, until the trial is over, I suggest that you
20 avoid reading any newspapers or news journals at all and
21 avoid listening to any television or radio newscasts at all.

22 I do not know whether there will be news about
23 this case. But if there is any news about this case, or
24 news reports, you might accidentally find yourself reading
25 or listening to something about the case. If you want, you

1 can have someone clip out any stories and set them aside to
2 give you after the trial is over.

3 The parties have a right to have you decide this
4 case based only on evidence admitted here in court. If you
5 research, investigate, or experiment on your own or get
6 information from other sources, your verdict might be
7 influenced by inaccurate, incomplete, or misleading
8 information.

9 Witnesses here in court take an oath to tell the
10 truth, and the accuracy of their testimony is tested through
11 cross-examination.

12 All of the parties are entitled to a fair trial
13 and an impartial jury, and you have to conduct yourselves in
14 a way that assures that the integrity of the trial process
15 remains throughout the trial process. If you decide a case
16 based on information not admitted in court, you will deny
17 the parties a fair trial, you will deny them justice.

18 Remember, you have taken an oath to follow the
19 rules and you must do so. If you do not, the case might
20 have to be retried and you could be held in contempt of
21 court and possibly punished.

22 Now, eighth, do not make up your mind during the
23 trial about what your verdict should be. Keep an open mind
24 until after you and your fellow jurors have discussed all of
25 the evidence.

1 Now, the trial will proceed in the following
2 manner:

3 First, the plaintiff's lawyer may make an opening
4 statement. Next, the defendant's lawyer may make an opening
5 statement.

6 An opening statement is not evidence. It is a
7 summary of the evidence the lawyer expects you will see and
8 hear during trial.

9 After opening statements, the plaintiffs will then
10 present evidence. The defendant's lawyer will have a chance
11 to cross-examine the plaintiff's witnesses.

12 After the plaintiff has finished presenting his
13 case, the defendant may present evidence and the plaintiff's
14 lawyer will have the chance to cross-examine the defendant's
15 witnesses.

16 After you have seen and heard all of the evidence
17 from both sides, the lawyers will make closing arguments
18 that summarize and interpret the evidence. Just as with
19 opening statements, closing arguments are not evidence.

20 After the closing arguments, I will instruct you
21 further on the law and you will go to the jury room to
22 deliberate and decide your verdict.

23 Counsel, are we ready to proceed?

24 MR. COLLYARD: Yes, Your Honor. Thank you. May
25 it please the Court, Counsel.

1 Women and Men of the Jury, good afternoon. Thank
2 you for being here and thank you for being willing to serve
3 on a jury and, most importantly, thank you for giving me
4 your time. I really do appreciate your giving me your time.

5 This is a simple case. It's about how a bank
6 helped a criminal use a small business checking account to
7 carry out one of the biggest money laundering frauds in
8 American history and then turned around and intentionally
9 destroyed key evidence to try to cover up everything it knew
10 and to try to hide everything it had done.

11 The evidence will show, Ladies and Gentlemen, that
12 banks have a responsibility to detect and prevent suspicious
13 activity on their accounts and they cannot let their
14 accounts be used to carry out illegal activity. That is a
15 responsibility that all banks must live up to.

16 We are here today, we are here today because, as
17 the evidence will show, BMO Harris Bank chose to ignore its
18 responsibility by looking the other way and allowing this
19 man, Tom Petters, to use the Petters Company, Inc. small
20 business checking account all as part of a massive money
21 laundering fraud, a massive Ponzi scheme where he laundered
22 \$37 billion in and \$37 billion out of that account, all as
23 part of that massive fraud and massive Ponzi scheme. And
24 Mr. Petters was found guilty to have been -- to have
25 defrauded investors into loaning \$1.926 billion.

1 This case, honestly, boils down to something as
2 simple as the four-letter word that I just told you it was
3 about. The evidence will show that the bank was required to
4 know whether or not the billions of dollars going in and
5 going out of that account made sense for the Petters Company
6 business, and the evidence will show that the bank could see
7 that none of it made sense.

8 And the evidence will show that, therefore, the
9 bank knew that that activity wasn't right. And instead of
10 stopping it or reporting it, the bank assisted Petters with
11 it. The bank looked the other way and allowed Tom Petters
12 to continue to use that account over and over and over for
13 years and years and years carrying out that illegal
14 activity.

15 The evidence is going to show, Ladies and
16 Gentlemen, that the bank could see and the bank knew that
17 the billions of dollars going in and out of that account did
18 not make sense for the Petters Company, Inc. business.
19 That's what this entire case is going to be about. I want
20 to give you a preview of that. And when I talk about that,
21 I'm going to talk about what I will call the three
22 fingerprints of the bank's knowledge, and this will be the
23 evidence that will show that the bank knew that the money
24 going in and out did not make sense.

25 And then I want to unpack that in more detail.

1 I'm going to spend about seven minutes giving you this
2 preview and then I'm going to spend the rest of the time
3 unpacking that in more detail.

4 But before we do that, I need to tell you what Tom
5 Petters was doing so that you have context for that when we
6 get there.

7 You'll hear that what Tom Petters was doing was he
8 was supposedly buying and reselling big-screen TVs, consumer
9 electronics. And what he would do, Ladies and Gentlemen, is
10 he would supposedly buy them from big wholesalers. He would
11 buy these TVs from wholesalers and then he would turn around
12 and he would sell them to retailers like Costco and Walmart.
13 And in order to do that, he would borrow money from
14 investors and he promised to pay them back.

15 But other than borrowing money from investors,
16 Ladies and Gentlemen, you will hear and you will learn it
17 was all fake, it was all phony, it was all a fraud. And Tom
18 Petters, Petters Company, Inc., the entire business was
19 being run out of a small business checking account at the
20 bank.

21 So let me tell you about those three fingerprints
22 of how the evidence will show that the bank could see that
23 the money going in and out didn't make sense.

24 One, we're going to have evidence that retailers
25 were supposed to be wiring money into that account to pay

1 for the TVs. But the bank could see and the bank knew that
2 no retailer ever wired a cent into the account.

3 Two, we're going to have evidence that, instead,
4 nearly all of the money being wired into the account was
5 coming in from the two wholesalers who Tom Petters was
6 supposed to be buying the TVs from. And that didn't make
7 sense for the Petters Company business because that money is
8 coming in the wrong way.

9 And when I say it's going in the wrong way, Ladies
10 and Gentlemen, I mean it's going the wrong way. Money
11 should not have been coming in from them. Money should have
12 been going to them.

13 This would be like, for example, if McDonald's had
14 a checking account and nearly all the money was going into
15 the checking account from the two people or the two
16 companies that McDonald's buys its hamburgers from.

17 And you will hear that these two entities up here,
18 Nationwide and Enchanted, the ones on the TV, you're going
19 to hear about them a lot in this case. Their real names --
20 their full names are Nationwide International Resources and
21 Enchanted Family Buying Company. And you will hear, Ladies
22 and Gentlemen, that they were involved in activities related
23 to the fraud.

24 And, third, the evidence will show that the bank
25 could see and the bank knew that tens of millions of dollars

1 were going out of that small business checking account and
2 directly into the pockets of Tom Petters and his
3 co-conspirators, and nobody from the bank will be able to
4 come here and explain what the legitimate business purpose
5 was for that happening.

6 Now, as part of all of this and along the way,
7 you're going to hear that for years money laundering alarms
8 were sounding off inside of the bank telling the bank that
9 it was all suspicious and it was all potentially fraudulent
10 and it all needed to be looked at. Here they are
11 (indicating).

12 This went on for 39 months, for three and a half
13 years, for all of the billions of dollars going in and out
14 of that account. From 2005 up to June of 2008, these things
15 were sounding off.

16 And you will hear that the bank has its own
17 Anti-Money Laundering Group who has to investigate these
18 things to see if those wires going in and out were
19 legitimate or for legitimate business purposes.

20 And you will hear, Ladies and Gentlemen, that
21 nobody, none of the investigators who looked at these alerts
22 will be able to come here and say why they closed them, why
23 did they close them, and what was the legitimate business
24 purpose for why Nationwide and Enchanted, for example, were
25 wiring that money into the account. And I want to give you

1 a preview of what the evidence on that will show, because
2 we're going to spend a lot of time in this case talking
3 about that.

4 This is Sara Johnson, Ladies and Gentlemen.
5 Ms. Johnson worked at BMO Harris Bank until 2017. She was
6 in the Anti-Money Laundering Group and when she showed up to
7 work every single day, her job was to look for suspicious
8 activity, and you will hear that. She was at the bank for
9 12 years and she was a manager in the group. She herself
10 turned off more than \$27 billion in alarms.

11 Now, Ms. Johnson lives in Texas, so she won't come
12 here to testify live. I'm going to call her adverse in my
13 case-in-chief by playing a videotaped deposition of her, and
14 you're going to hear it. It's going to be about an hour and
15 a half long. I want to give you a preview of the type of
16 evidence you'll hear from Ms. Johnson.

17 "Do you have an understanding that as an AML analyst one
18 of the things you were trying to do is figure out whether or
19 not there was money laundering going on with activity
20 pertaining to an account?

21 "I don't remember.

22 "Did you understand that that was the function of the
23 Anti-Money Laundering Group?

24 "I don't remember.

25 "What did you understand the function of the Anti-Money

1 Laundering Group was while you were at M&I Bank?

2 "I don't remember.

3 "You can't describe for the jury a single function of
4 what the Anti-Money Laundering Group was trying to
5 accomplish?

6 "I don't remember."

7 You will hear Ms. Johnson left BMO Harris Bank in
8 2017 and that deposition was taken of her in January of
9 2018.

10 Ladies and Gentlemen, the big fight in this case
11 is going to be about whether or not the bank knew enough to
12 know, whether the bank knew enough to know that the activity
13 going in and out of that account wasn't right. And the
14 evidence will show, Ladies and Gentlemen, that the bank
15 could see way too much and the bank knew way too much to not
16 know.

17 Now, I'd like to make some re-introductions and
18 I'd like to re-introduce myself. My name is Mike Collyard,
19 and with me as well trying this case is Mr. Joe Anthony and
20 Mr. David Marder. And we have the honor and privilege of
21 representing Mr. Douglas Kelley.

22 You will hear that Mr. Kelley was appointed by the
23 Federal Bankruptcy Court to be what's called the
24 court-appointed trustee to be able to bring these claims
25 against BMO Harris Bank.

1 And Mr. Kelley will testify and he will tell you
2 how he's been a lawyer here in Minnesota for 48 years now,
3 and he will talk about some of the high-profile cases that
4 he's worked on to give you background.

5 And he will talk about how he was selected and how
6 he was chosen to be the court-appointed trustee to be able
7 to bring these claims that Petters Company, Inc. has against
8 BMO Harris Bank.

9 And Mr. Kelley will tell you that, unlike a
10 traditional situation, where you have a plaintiff suing to
11 get money, Mr. Kelley is not here suing to get money for
12 himself. Mr. Kelley is here as a court-appointed trustee to
13 bring claims that Petters Company, Inc. has against BMO
14 Harris Bank.

15 Now, Mr. Kelley brought this case against BMO
16 Harris Bank. BMO Harris Bank is a massive bank based out of
17 Chicago. They are part of the Bank of Montreal from Canada,
18 one of the bigger banks in the world. And what you need to
19 know about that is in 2011 BMO bought a bank called M&I or
20 Marshall & Ilsley Bank.

21 And from 2002 up through 2008, which is the
22 relevant time period in this case, Tom Petters had that
23 small business checking account at M&I Bank.

24 And when BMO bought M&I, the bank personnel who
25 were working on the Petters Company account, the Petters

1 relationship, and those anti-money laundering people, like
2 Sara Johnson that I was telling you about, they became BMO.
3 And you will hear throughout this case us talk about M&I as
4 BMO, BMO as M&I, and both of them together as the bank.

5 So why are we here? Mr. Kelley will tell you that
6 he is here seeking justice. And it's going to be up to you
7 to determine justice in this case. You are the only ones
8 who hold the power to be able to do that.

9 And the evidence is going to show that BMO Harris
10 Bank is responsible for what happened here, and at the end
11 of this case we're going to ask that BMO Harris Bank be held
12 responsible.

13 And as you determine the facts in this case -- it
14 is your role as a jury to be able to do that -- it's
15 actually pretty simple. It's not that much different than
16 what you see on TV. You're simply going to follow the
17 evidence.

18 And the evidence that we're going to show you is
19 going to fall into a few different categories:

20 One, we're going to have evidence of the bank's
21 knowledge and how the bank knew that billions of dollars
22 going in and out of that account did not make sense for the
23 Petters Company business.

24 Two, we're going to have evidence of the bank's
25 motive and the big opportunity that the bank saw by having

1 this relationship with Tom Petters and trying to grow it.

2 And, three, we're going to have evidence of the
3 losses, the \$1.926 billion that those lenders loaned Petters
4 Company, Inc. and were not paid back.

5 Now, I want to talk about the evidence, but before
6 we do that I need to tell you what BMO did to some of the
7 evidence in this case, because you will hear, Ladies and
8 Gentlemen, as I told you when I stood up here, I told you
9 that the bank intentionally destroyed key evidence to cover
10 up what it knew and to try to hide what it had done.

11 And the facts and the evidence are going to show
12 that that is exactly what happened, BMO Harris Bank
13 intentionally destroyed evidence in this case. And you will
14 hear and the facts will show that BMO did that, and the
15 evidence was harmful to BMO. Now, I just want to tell you a
16 little bit about that. It will take just about five
17 minutes.

18 You will hear that in September of 2008 Tom
19 Petters is arrested. The FBI goes in and it raids Petters
20 Company, Inc. business and it shuts down the fraud.

21 And you will hear that right after that happened,
22 the federal district court here in Minnesota, a judge by the
23 name of Ann Montgomery issued what's called an order. This
24 is an order. It's an injunction.

25 And what this did is it required the bank,

1 required the bank to keep all of its documents, all of its
2 e-mails, all of its records pertaining to the Petters
3 Company, Inc. and the Petters Company, Inc. account so that
4 that evidence and that information could be preserved and be
5 kept.

6 And you will hear, Ladies and Gentlemen, that BMO
7 Harris Bank did not do that. And, instead, BMO Harris Bank
8 went ahead and intentionally destroyed evidence on what is
9 called e-mail backup tapes. These are massive backup tapes
10 that have a massive amount of e-mails and information on
11 them and documents.

12 And you'll hear that BMO really did this in three
13 big swoops. It did it once in 2010. Then it did it again
14 in 2011. And BMO -- and when I say "BMO," Ladies and
15 Gentlemen, I mean BMO Harris Bank, not M&I. In 2014 BMO
16 Harris Bank found more backup tapes and then destroyed them,
17 and that was after it had bought M&I and it was after
18 Mr. Kelley had already filed this very lawsuit against them.

19 And what you will learn is that in 2014 BMO was
20 out looking for more backup tapes because they were involved
21 in a lawsuit in Florida, and they found these backup tapes
22 because they were searching for more backup tapes that had
23 potentially survived that destruction from 2010 and 2011.

24 And you will learn that they find them. There's
25 six of them. They found six backup tapes. But they don't

1 review them. They don't look at what's on them. And
2 instead you will hear that they intentionally destroy them.

3 And when they do that, Ladies and Gentlemen, they
4 did not tell the plaintiff in this case that they had those.
5 The plaintiff in this case had to find out later on during
6 this litigation that that happened.

7 Let's go back to the evidence. Let's talk about
8 knowledge. Really what I want to do is I want to break
9 knowledge up into three parts:

10 First, I want to talk about how the bank had a
11 responsibility to detect and prevent suspicious activity.

12 Then I have to tell you real quickly the Petters
13 Company story, and the evidence that will show that the bank
14 knew how the Petters Company business was supposed to work.

15 And then I want to go back to those three
16 fingerprints and focus on those three fingerprints of the
17 knowledge.

18 Let's start with the bank's responsibility. When
19 I stood up here, I told you that banks have a responsibility
20 to detect and prevent suspicious activity. And I could show
21 you documents and I can show you e-mails that you're going
22 to see in this case, PowerPoint presentations.

23 But I'm going to play for you a one-minute clip of
24 M&I's CEO back in 2004 during a training video explaining to
25 the bank personnel how important the responsibility to

1 detect and prevent suspicious activity is and what that
2 means.

3 And here it is: This is the CEO of M&I back in
4 2004. His name is Dennis Kuester.

5 (Video clip played)

6 MR. COLLYARD: The evidence will show that the
7 bank knew it had a responsibility to detect suspicious
8 information or suspicious activity, and the bank knew it
9 couldn't ignore that.

10 The bank had a term for that. And I'll show you
11 this. This is Plaintiff's Exhibit 5. This is training
12 material of the bank's. And the bank calls that willful
13 blindness. If you ignore suspicious activity, that is
14 willful blindness. And you can see under the bank's
15 own definition, the bank says it's the practice of ignoring
16 potential criminal activity.

17 And you will hear in this case when the bank is
18 looking for things like money laundering or looking at
19 alarms on accounts or alerts on accounts for suspicious
20 activity and they are looking to see if the money going in
21 and out of that account makes sense for the business, you
22 will hear that if they have reason to suspect -- that's all
23 it is -- if they have reason to suspect that that activity
24 doesn't make sense for the business, they have to file a
25 report with the federal government and it's called a

1 Suspicious Activity Report. It's spelled SAR. It's S-A-R.
2 And you will hear about that in this case.

3 And the bank knows, Ladies and Gentlemen, its own
4 documents here say that a bank can be implicated in a money
5 laundering scheme for failing to identify activity that
6 should have been reasonably identified as suspicious.

7 Let me tell you real quickly the Petters Company
8 story, and I'll just break this up into three short
9 chapters:

10 One, I want to tell you how the Petters Company
11 business was fake.

12 Two, I want to show you how the bank understood
13 the Petters Company business model.

14 And then, three, I want to talk about how the
15 evidence will show the bank knew it didn't work that way.

16 Let's start with the Petters Company business was
17 fake. And, really, this story takes place from 2002 up
18 through 2008. We've got to go back to 2002 to 2008 in this
19 case. That's the relevant time period.

20 And if we start with Chapter 1, the Petters
21 Company base was fake. You will hear that in September, it
22 was September of 2008, the FBI is tipped off that Tom
23 Petters and the other officers of the Petters Company, Inc.
24 are using the Petters Company business as a fake business to
25 run this massive money laundering fraud, this massive fraud.

1 And as soon as that happens, you will hear the FBI goes in
2 and arrests Tom Petters.

3 Here is Tom Petters, and here are the other two
4 officers involved in the Petters Company business. It's
5 Deanna Munson or Coleman and Bob White.

6 Deanna Munson or Coleman, she'll actually testify
7 in this trial and you will learn that she was actually the
8 one who tipped off the FBI about Tom Petters.

9 And you will hear that Ms. Munson and Mr. White,
10 they both pled guilty for their part in the fraud. And Tom
11 Petters, he was actually tried and convicted in the same
12 exact courtroom that we are in right now and he was
13 convicted on charges of wire fraud, conspiracy, and money
14 laundering. And as we're sitting here today doing this,
15 Mr. Petters is sitting in Leavenworth federal prison serving
16 out his 50-year long sentence, where he belongs.

17 But you will hear, Ladies and Gentlemen, that the
18 three of them, they were running that business out of the
19 Petters Company, Inc. small business checking account.

20 And I keep calling it the small business checking
21 account because you will hear that the bank kept it in what
22 the bank calls its small business banking group.

23 And to give you context for what that means, the
24 biggest customer, the biggest business customer in the small
25 business banking group at the bank, they did about

1 \$15 million in annual revenues a year. And if you compare
2 that to just the average of the \$5 and a half billion that
3 was being wired into the Petters Company account every
4 single year from 2002 to 2008, that's about 350 times bigger
5 than the revenues of the next biggest customer. There was
6 no other account. There was no other client like the
7 Petters Company, Inc. at the bank and the bank knew it.

8 Let's go to Chapter 2 and let's talk about how the
9 bank knew how the Petters Company business was supposed to
10 work. The evidence will show that the bank knew that the
11 business model was simple and it worked like this:

12 Petters would borrow money from investors. He'd
13 take that money and supposedly buy TVs, consumer
14 electronics. Then he'd turn around and he would sell them
15 to big-box retailers like Costco and Walmart. And after
16 those retailers wired their payments into the Petters
17 Company, Inc. account, Mr. Petters would use that money to
18 pay back the investors.

19 That's how the business model was supposed to
20 work. That's how the bank learned the business model was
21 supposed to work.

22 But let's just pause this for a moment, Ladies and
23 Gentlemen because, again, other than borrowing money from
24 investors, none of this happened. Petters didn't buy any
25 TVs. He didn't sell any TVs. And certainly no retailer

1 ever wired a cent into the account.

2 Instead, I'll tell you what happened was, and
3 you'll learn, that what Petters was doing is he's taking the
4 money from investors, he's putting it into his pockets,
5 using some of it to pay back old investors, and then he
6 would go out and get new investors. And he would do it over
7 and over and over. This is a Ponzi scheme, Ladies and
8 Gentlemen, and that's what was going on here.

9 Now, what you'll learn is he was taking the
10 billions of dollars that he was getting while he was doing
11 this and he was running it through the small business
12 checking account to make it look legitimate, to make it look
13 real, and he was using that account to run the fraud. That
14 is money laundering, Ladies and Gentlemen, and that's what
15 that was.

16 Now, throughout this case you will learn that the
17 bank teaches its bank personnel to look for that.

18 This is another training material of the bank.
19 This is Plaintiff's Exhibit 4. This is how the bank would
20 teach its personnel about money laundering: You have a bad
21 guy who takes the money. He runs it through the bank to try
22 to clean it up to make it look legitimate so it re-enters
23 the world looking clean. That's essentially what this slide
24 is doing and teaching.

25 And the bank taught its people to look for that.

1 Even the people that weren't in the Anti-Money Laundering
2 Group that they had were supposed to be looking for it
3 because, as you will hear, ladies and gentlemen, of the
4 responsibility that banks have.

5 Here's another training material. This is
6 Plaintiff's Exhibit 5 again. And this is how the bank
7 described it, it says, "Money launderers clean their dirty
8 money through banks."

9 And, Ladies and Gentlemen, the bank is teaching
10 its people that because of its responsibility and because
11 you can't run a massive money laundering fraud without a
12 bank.

13 Let's go back to how the bank knew the business.
14 You're going to hear this concept in banking called "know
15 your customer." This is basic Banking 101 stuff. Okay?
16 Banks are obligated to know their customers and understand
17 their customer's activities and their business. And you
18 will learn that not only do banks -- not only are they
19 required to know it, they want to know it.

20 And you will hear about this bank in particular
21 wants to know their customer's business so they can sell
22 them products and services, so they want to know as much
23 about their customer as they can. And you'll learn that,
24 Ladies and Gentlemen.

25 But the bank also knew how the Petters Company

1 business was supposed to work. Because if we step back to
2 2002, you will hear that the bank was told how the business
3 was supposed to work by a then-convicted money launderer,
4 and his name was Frank Vennes, everybody, and we'll talk
5 about Frank Vennes throughout this case.

6 But you will learn that Frank Vennes sat down with
7 banker Christopher Flynn. This is Christopher Flynn
8 (indicating). He was a banker at M&I Bank, and he managed
9 the Petters Company relationship and the Petters Company
10 account at one time. He was also the boss of the other guy,
11 Ed Jambor, who managed the account up to that period.

12 And you will learn that Christopher Flynn went out
13 and met with Frank Vennes out at Frank Vennes's fancy Lake
14 Minnetonka home, where Mr. Vennes told Mr. Flynn how the
15 business worked.

16 And Mr. Vennes was telling Mr. Flynn how the
17 business worked because Mr. Vennes wanted the bank to give
18 him a \$5 million loan for his business called Metro Gem to
19 be able to invest in Petters Company, Inc.

20 And you will hear that when Mr. Vennes was telling
21 Mr. Flynn about the business, Mr. Vennes was telling him how
22 he had been working with Petters and he was making about
23 20 million bucks a year doing this. This is back in 2002.

24 And you will learn that the bank knew that if the
25 bank was going to loan Frank Vennes, a guy who had been

1 making \$20 million a year, \$5 million, if they were going to
2 loan him \$5 million, they would have to put up their own
3 money to be able to do that.

4 And you will hear that Christopher Flynn and the
5 bank told Mr. Vennes, no, we're not going to give you a
6 \$5 million loan for you to invest -- for your Metro Gem
7 business to invest in the Petters Company, Inc. business.

8 Let's go to Chapter 3. The evidence will show
9 that the bank knew the Petters Company, Inc. business model
10 did not work the way that it was supposed to. If we go
11 back, this (indicating) is how it was supposed to work.

12 But the bank could see every single day, Ladies
13 and Gentlemen, that this didn't happen because the bank
14 could see and the evidence will show that this happened
15 instead (indicating).

16 The bank could see, because the bank had access to
17 the account and would review the account and could access it
18 at any time, that no retailers ever wired a cent into the
19 account.

20 The bank could see that, instead, nearly all of
21 those billions of dollars were coming in from the two
22 wholesalers who Petters is supposed to be buying the TVs
23 from. And that didn't make sense for the business because
24 it was going the wrong way. And the bank could see that,
25 instead, tens of millions of dollars were going directly

1 into the pockets of Tom Petters, Deanna Munson, and Bob
2 White.

3 This (indicating) is the transaction activity that
4 the bank could see. I also call this the line of sight.
5 This was the bank's line of sight that they could see every
6 day, and the bank could see every day from this line of
7 sight that this activity wasn't right. They had access to
8 it. They could look at it.

9 And these (indicating) are those three
10 fingerprints, Ladies and Gentlemen, that I told you about
11 earlier and it will always come back to this.

12 If we just focus on the Nationwide and Enchanted
13 piece, I just want to give that some context. Because if
14 you just look at the wires that came in from Nationwide and
15 Enchanted, there was \$37 billion that was wired into the
16 account. Nearly 25 billion of that came in from Nationwide
17 and Enchanted, so about 68 percent of it, and that's from
18 2002 up through 2008. And this is what it looked like to
19 the bank.

20 So let's go back to the three fingerprints, and
21 it's the same exact transaction activity I just showed you,
22 but this time I want to talk about it in a little bit
23 different order.

24 I want to talk about, one, Nationwide and
25 Enchanted and I'll show you more on that.

1 Two, I'm actually going to show you millions of
2 dollars going to Deanna Munson and Bob White.

3 Three, I want to talk about how the bank knew the
4 retailers were supposed to be wiring money into the account
5 and that didn't happen.

6 So let's start with Nationwide and Enchanted, and
7 the best way to do this is if we go to 2005. You will hear
8 that in 2005 the bank had installed its own computerized
9 money laundering software and system. You will hear this
10 called Searchspace. And what Searchspace does is it looks
11 for patterns of unusual activity or suspicious activity.

12 And I'll show you this (indicating), because as
13 soon as they installed this in 2005, money laundering alarms
14 started sounding off inside of the bank on the Petters
15 Company, Inc. account.

16 This is the first alarm, Ladies and Gentlemen.
17 This is an alert called 05327. This is the first alert. It
18 happened in March of 2005.

19 And what Searchspace does is it looks at the wires
20 coming in and going out and it compares them to what other
21 customers' wires should be and it creates a score. And if
22 that score breaks a certain threshold, in this instance you
23 will hear it's 75, the alarm triggers or the alert triggers.
24 And you can see how loud this alarm is. More than three
25 times bigger, three times louder than what the threshold

1 was.

2 And this did not just happen once. As I showed
3 you earlier, this happened, and you will hear, 39 months,
4 for three and a half years for all of the billions of
5 dollars going in and going out of the account.

6 And if we just focus on the Nationwide and
7 Enchanted piece, because every wire that came in from
8 Nationwide and Enchanted triggered these alarms. Every wire
9 that came in triggered these alarms, but every wire that
10 came in from Nationwide and Enchanted triggered these
11 alarms.

12 And what you'll hear what that means is the bank
13 had to investigate them, they had to look at them, they had
14 to figure out how they made sense for the Petters Company,
15 Inc. business.

16 And they had the Anti-Money Laundering Group that
17 did that, and here (indicating) they are. I'll show you
18 these folks. This was the Anti-Money Laundering Group who
19 investigated and analyzed those wires coming in from
20 Nationwide and Enchanted.

21 And that number by them is the amount of money
22 that they closed, Sara Johnson leading the way with more
23 than \$27 billion in alarms for incoming and outgoing wires
24 that she chose to close.

25 The bank had to investigate the wires coming in

1 from Nationwide and Enchanted, and in order to do that they
2 had to figure out who was Nationwide, who was Enchanted, why
3 were they wiring that money in in order to turn off the
4 alarms.

5 And you will hear, Ladies and Gentlemen, that this
6 wasn't some guessing game, this wasn't some mystery to them.
7 They had all kinds of tools that they could use to figure
8 out why those wires were coming into the account. They
9 could look at their own databases about the customer and see
10 if there was information about that. They could search the
11 internet. They could look on the Secretary of State's
12 website. They could do all kinds of things.

13 But, easiest of all, they could just pick up the
14 phone. They could literally just pick up the phone and call
15 the customer relationship managers or the business bankers
16 to see what they knew about it.

17 And here are the two business bankers on the
18 Petters Company relationship and the Petters Company
19 account, it's Edward Jambor and then his boss at one time,
20 Christopher Flynn.

21 Those anti-money laundering analysts could have
22 picked up the phone and just called these two people and
23 said: Who is Nationwide? Who is Enchanted? Why in the
24 world are they wiring in billions and billions of dollars
25 consistently over all of these years?

1 And you will even hear that those anti-money
2 laundering analysts and investigators, when they
3 investigated other alerts on other customers, they would do
4 that. They would pick up the phone and they would call the
5 customer relationship manager and ask them questions.

6 And you will learn that if Mr. Jambor or Mr. Flynn
7 couldn't explain why those wires were coming in, well, they
8 couldn't close the alert. And none of them, none of them
9 picked up the phone to call these two people, not once, with
10 all of that volume of money going in and out.

11 But not only that, Ladies and Gentlemen, they
12 couldn't just turn them off. And you will hear this. In
13 order to turn off the alarms or to close the alerts, as they
14 will call it, they had to document it, they had to document
15 their reasons.

16 And it wasn't just closing them and filling in
17 some information. They had to actually explain why, why
18 they were concluding that the activity was not suspicious,
19 and they had to do that in enough detail to convince the
20 reader of their documentation that that activity was not
21 suspicious.

22 I'll show you this, because we're going to talk
23 about the "why" in this case. This is a bank policy or a
24 bank guideline. This is one of the bank's documents. This
25 is Plaintiff's Exhibit 398. I'll show you the relevant

1 parts here.

2 This (indicating) is what they follow when they
3 are turning off an alert or closing an alert. It says make
4 sure you ensure that you understand and explain what is
5 going on. Ask yourself the following questions when closing
6 an alert. This is what they're supposed to do.

7 And it says right here, "Do the comments provided
8 convince the reader that the alert is not suspicious?" That
9 is the level of detail that they had to document when they
10 chose to close those alerts.

11 So I want to give you a preview of what the
12 evidence of that will show. And in order do that, I want to
13 start with an alert and then I want to give you a preview of
14 some of the testimony.

15 This is an actual alert that was closed. This is
16 Alert 55878. This was an alert that scored at 237, and it
17 was one that Sara Johnson did. And this just tells us that
18 it was for incoming and outgoing wires, so it would include
19 all those wires coming in from Nationwide and Enchanted
20 during that period.

21 And here's what Ms. Johnson's "why" is: "Wires to
22 and from various businesses. Activity does not appear
23 suspicious. Activity is consistent and expected for type of
24 business customer."

25 So you'll hear, Ladies and Gentlemen, testimony

1 about this. I want to give you a preview of that. Here's
2 Sara Johnson talking about her "why" on this same exact
3 alert:

4 "It says, 'Activity does not appear suspicious.
5 Activity is consistent and expected for the type of business
6 customer.' Do you see that?

7 "I do.

8 "Why are you concluding that the activity does not
9 appear suspicious?

10 "I don't remember."

11 Again, that was her own documentation, Ladies and
12 Gentlemen, that you will see, her own documentation where
13 she's supposed to convince the reader that it's not
14 suspicious.

15 So I'll give you a preview of another witness who
16 you will hear from in this case. This is Sara Johnson's
17 boss. Her name is Bernita Hile. Ms. Hile worked at BMO
18 Harris Bank up until -- from 2005 up until 2013, when she
19 retired. She was Ms. Johnson's boss. She was a manager in
20 the Anti-Money Laundering Group.

21 Now, she no longer works at BMO Harris Bank
22 because she retired and she doesn't live here in Minnesota,
23 so you're going to hear me call her adverse in this case as
24 well and I'm again going to have to play her videotape
25 deposition. That one, too, is going to be somewhere around

1 an hour and a half.

2 But here is a preview of what Ms. Hile is going to
3 say, and this is Ms. Hile talking about the same exact alert
4 that you just heard Sara Johnson talk about. Here is a
5 preview of that evidence:

6 "She said, 'Activity does not appear suspicious.' Do
7 you see that?

8 "Yes.

9 "Can we look at her comments and conclude why she
10 believes that the activity was not suspicious?

11 "I don't -- I don't know. I don't know -- well, you're
12 saying from her comments?

13 "Yeah. Does she explain why she believes the activity
14 is not suspicious?

15 "Not really, no."

16 Again, Ladies and Gentlemen, that is the
17 documentation that is supposed to convince the reader that
18 the activity was not suspicious, and that's the type of
19 testimony you're going to hear on this.

20 Now, let me just tell you one more thing about
21 this. So these alarms are sounding off and going off from
22 2005 up until June of 2008, and you will hear that this is
23 about 26 billion in, 26 billion dollars out during this time
24 period.

25 Now, after Tom Petters is arrested, after the FBI

1 comes in and shuts down the fraud, you will learn that the
2 bank goes back and reviews, goes back and reviews some of
3 the alerts that they had looked at and closed.

4 Now, they only go back to 2008. They don't go
5 back all the way. They go back to 2008 and they relook at
6 the alerts that they once closed and said were absolutely
7 not suspicious and they look at that exact same activity.

8 Now, of course, the Ponzi scheme and the money
9 laundering fraud is revealed to the rest of the world
10 because it's out in the press, and they know that.

11 So they go back and they look at it, Ladies and
12 Gentlemen, but this time they conclude, and you'll hear,
13 that they decide that the activity back in 2008 did appear
14 to be suspicious.

15 And here's what they say. This is Plaintiff's
16 Exhibit 333, and this is an analysis that they do on that.
17 I'll show you the relevant conclusion.

18 It says, "The investment scam can be seen in
19 Petters Company Inc.'s account" -- that's the transaction
20 activity -- "during the review period. The incoming and
21 outgoing wires and funds transferred through checks between
22 companies and individuals known to have been involved in the
23 fraud, such as Enchanted, Nationwide, Deanna Coleman, Bob
24 White, Metro Gem, Frank Vennes, appear suspicious." And
25 they base that conclusion on the same exact activity that

1 they once said was not suspicious.

2 Let's go to the second fingerprint, talk about the
3 tens of millions of dollars that the bank could see going to
4 Tom Petters, Deanna Munson, and Bob White. And I keep
5 telling you that there's tens of millions. I'm going to
6 show you some millions.

7 These are checks that went out of the account that
8 Deanna Munson wrote.

9 If you look at the top, there's a check. And
10 you'll see this one. It's a check from Deanna Munson to
11 Deanna Munson for 2 and a half million dollars in cash.

12 If you look to the one on the right, that's Deanna
13 Munson writing a check to Bob White for a million bucks and
14 she says, "Merry Christmas."

15 And then if you look down below, it says Deanna
16 Munson to Deanna Munson for a million, another Deanna Munson
17 to Deanna Munson for a million, another Deanna Munson to
18 Deanna Munson for a million. And you'll see this.

19 Now, I'll tell you something else that you will
20 hear, is that at one point in time the checks department
21 called up the business banker, Mr. Edward Jambor. And you
22 will hear this. The checks department reached out to Ed
23 Jambor to ask: Why is Deanna Munson writing a million
24 dollar check to herself?

25 And Ed Jambor actually picked up the phone or

1 talked -- I can't say he picked up the phone. He talked to
2 Tom Petters. You will hear he talked to Tom Petters. And
3 Tom Petters told him: Deanna Munson, she's building a
4 house. That's what the million bucks is for. Now,
5 remember, this isn't a payroll account. This is cash.
6 There's no taxes taken out of this.

7 And the evidence will show, Ladies and Gentlemen,
8 go back to -- remember that slide I showed you with the bad
9 guy putting the money in the bank and circulating it?

10 Go back to Plaintiff's Exhibit 5. Okay? This is
11 another one of their training materials where they are
12 trained to look for this stuff, because here they go. They
13 teach their people illegal funds are circulated into the
14 economy to take on the appearance of legitimacy through
15 purchases, like cars, houses. Okay? This is the type of
16 stuff that the bank could see and the bank knew.

17 Let's go on to the third fingerprint. The
18 evidence will show that the bank knew that retailers were
19 supposed to be wiring money into the account, and we'll have
20 evidence that will show that no retailer ever wired a cent
21 into that account.

22 So let me tell you this little story by just two
23 little pieces. I'm going to bookend it. I'm going to deal
24 with the business bankers. I want to do it in 2003 with
25 business banker Ed Jambor, and I'm going to do it again in

1 2008 with business banker Christopher Flynn.

2 Let's talk about Mr. Jambor first. Now, he
3 managed the Petters Company account and the relationship
4 from 2002 up until the time he left the bank in August of
5 2007, and that's when you will hear Christopher Flynn came
6 over as boss and took over the account because it was a big
7 opportunity. You will hear about that.

8 I'm going to show you an e-mail that Mr. Jambor is
9 on. This is Plaintiff's Exhibit 104. This is from February
10 of 2003. This is from -- this is one of Tom Petters'
11 investors named Jon Sabes, and he writes Shari Rhode --
12 she's at the bank; she was Ed Jambor's boss at one time --
13 and Mr. Jambor.

14 And Mr. Sabes says to Ms. Rhode and Mr. Jambor
15 this: In reality, we are looking to have M&I Bank act as
16 custodian to receive retailer wire payments. With the
17 further direction of Deanna Munson at Petters, forward those
18 monies on to their appropriate bank accounts. And this
19 exact process happens every day with Petters.

20 And you will hear, Ladies and Gentlemen, this
21 evidence will show that the bank knew that retailers were
22 supposed to be wiring money into the account and the bank
23 knew that other people thought retailers were supposed to be
24 wiring money into the account.

25 But you will learn that Ed Jambor, he had never

1 seen a retailer wire money into the account. Nobody from
2 the bank will be able to say that they saw retailers wiring
3 money into that account.

4 Let's talk about Christopher Flynn. So
5 Christopher Flynn is the one -- again, he was Mr. Jambor's
6 boss. And when Mr. Jambor leaves in 2007, he takes over the
7 account.

8 And in 2008 you will hear that Mr. Flynn comes in
9 and he signs an agreement. It's called a Deposit Account
10 Management Agreement. And I won't talk about the specifics
11 of the agreement other than this:

12 You will learn that the entire agreement that he
13 signs -- and he signs it with Tom Petters. He signs it with
14 Tom Petters, and the purpose of the agreement contemplates
15 that retailers, and you will hear the example Costco,
16 retailers like Costco are supposed to be wiring money into
17 the account for then Christopher Flynn or the bank to have
18 that money, get a transaction list from Deanna Munson that
19 says now that retailers have wired money into the account,
20 take it and send it here. And that's what the purpose of
21 that agreement is.

22 And that evidence will show that the bank knew
23 that retailers were supposed to be wiring money into the
24 account. Again, nobody, nobody will be able to say that
25 retailers actually did that.

1 Now, I have a banking expert here who I'd like to
2 introduce you to. Her name is Cathy Ghiglieri.

3 Ms. Ghiglieri, are you here? Can you please stand
4 up? Thank you, Ms. Ghiglieri.

5 Ms. Ghiglieri will testify as a banking expert.
6 She was a former Texas banking commissioner. She was a bank
7 regulator in Texas. And she will tell you that in her
8 expert opinion -- she will talk about some of the documents
9 and some of the things that we've talked about here, and she
10 will talk about how in her opinion those were red flags and
11 she'll tell you what that means, what red flags means.

12 And she'll also talk you about how -- some of that
13 evidence and other evidence as well that you will hear about
14 where what the bank was engaged in was called atypical
15 banking practices, and she'll talk about that and what that
16 means.

17 Let's talk about motive. The bank had the motive,
18 Ladies and Gentlemen, and the motive was opportunity. Tom
19 Petters was a big relationship for these guys. You will
20 hear it. And Tom Petters -- back in the day, Tom Petters
21 was a big name in town. He was.

22 He was very well known in this town because what
23 he was doing is he was taking all the billions of dollars
24 from the money that he was making on the fraud and he was
25 putting it into legitimate businesses to make himself look

1 legitimate.

2 He was involved, for example, in Sun Country. He
3 bought Polaroid. He was involved in Fingerhut. I don't
4 know if you remember Fingerhut, but you'll hear Fingerhut is
5 a mail order catalog back in the day.

6 And this gave the bank a big opportunity to try
7 and go get more business. You're going to hear about this
8 concept in banking called cross-selling, and the bank will
9 talk about it. What they do is they take their customers
10 and they try to cross-sell their customers.

11 And what that means is if they have accounts, they
12 try to figure out what other accounts, what other types of
13 products or what other types of services can we sell our
14 customer. Let's bring in other people internally from the
15 bank in those particular areas to try to see if we can get
16 more business doing that. That's cross-selling.

17 But what cross-selling also is is you take your
18 customer and you leverage the relationships that your
19 customer has. So what a good opportunity to get new
20 business. You take your customer's business relationships
21 and you try to go get more business from them.

22 And that gave the bank a big opportunity. Because
23 you will hear even the bank, they tried to get in on the
24 Polaroid deal, for example. Now, they didn't get it, but
25 they certainly tried. And you'll hear that.

1 Also, Tom Petters had a lot of accounts outside of
2 the bank. So he had his payroll account at Highland Bank,
3 for example. You'll hear that. And what the bank would do
4 is they saw that as an opportunity to go out and try to get
5 Mr. Petters to move all of those accounts to the bank so
6 that they could have more business.

7 Here's a -- I'll just show you one document on
8 this. This is from what's called "MIContacts." This is an
9 internal database that the bank has, and what MIContacts is
10 is where the bankers go in and they write their notes about
11 what is happening or their communications with their client
12 so they can track it and see where things are at.

13 So this is MIContacts. This is an entry that Ed
14 Jambor was on back in 2003. And this is just one example.
15 You will see many. It says here, "Tom will need credit with
16 the companies when he moves all the accounts to us. He
17 hates U.S. Bank, works with Highland, but wants to move out
18 of there also. This is now too large for small business and
19 Ed will transition to Chris Flynn."

20 You'll see evidence like this, Ladies and
21 Gentlemen, where they are talking about how they are going
22 to get Tom to move all of the accounts over to the bank
23 because that was a good opportunity, that was a big
24 opportunity. That is what they were trying to do, Ladies
25 and Gentlemen.

1 Let's talk about losses. The evidence will show
2 that the losses that the bank is responsible for in this
3 case are actually pretty darn simple. It's the
4 \$1.926 billion in debts that Petters Company, Inc. owes to
5 those lenders who loaned Petters Company that money. Now,
6 you will hear those called the net losses.

7 I have another expert here that I'd like to
8 introduce you to. His name is Ted Martens. Mr. Martens,
9 will you please stand up. This is Mr. Martens, Ladies and
10 Gentlemen. Thank you, Mr. Martens.

11 Mr. Martens was a forensic accountant. He worked
12 at one of the biggest accounting firms in the world called
13 PricewaterhouseCoopers.

14 And you will hear that in 2008, right after the
15 fraud was revealed and it was shut down by the FBI,
16 Mr. Martens was approved by the Federal Bankruptcy Court,
17 too, to come in and work with Doug Kelley to do a forensic
18 accounting of the fraud, where he mapped out where all the
19 money came and went.

20 And in this case you will hear that Mr. Martens
21 mapped out what the losses were, and he will talk about them
22 as net losses. He will tell you this is the amount of money
23 that was loaned to Petters Company, Inc. and he will tell
24 you that that amount is somewhere around \$1.926 billion.
25 That's the amount of money that was loaned to Petters

1 Company, Inc. as a result of this.

2 So, Ladies and Gentlemen, why would the bank be
3 responsible for this? The evidence will show that you can't
4 run a multi-billion dollar fraud like this without the
5 willingness, without the assistance of a bank, and without a
6 bank who is willing to look the other way.

7 And at the end of this case, Ladies and Gentlemen,
8 we're going to ask that you award damages to Mr. Kelley,
9 damages to Mr. Kelley so that those debts that Petters
10 Company, Inc. owes to those lenders can be paid back to
11 them.

12 I thank you for your time, Ladies and Gentlemen.
13 I appreciate your patience. We look forward to trying this
14 case before you, and we look forward to standing up here
15 again at the end of this case and asking you for your
16 verdict in favor of Mr. Kelley.

17 Thank you so much.

18 THE COURT: Members of the Jury, we will take our
19 mid afternoon break. Please be prepared to come back into
20 the courtroom in 15 minutes, so at 3:15.

21 Please remember the instructions that I have given
22 you. Please do not discuss this case with anyone. Please
23 don't have any discussions or -- with any of the parties or
24 anyone who is likely to be a witness in this case. As you
25 know, you alone are the judges of the facts and must use

1 your judgment based on the evidence that's presented here in
2 the courtroom.

3 We'll take our 15-minute break, and thank you
4 again for your patience and your service.

5 (Jury excused)

6 THE COURT: Okay. We'll be ready to proceed at
7 3:15.

8 (Recess taken at 3:03 p.m.)

9 * * * * *

10 (3:18 p.m.)

11 **IN OPEN COURT**

12 **(JURY PRESENT)**

13 THE COURT: You may be seated.

14 Are we ready to proceed?

15 MR. GLEESON: I am.

16 THE COURT: You may.

17 MR. GLEESON: Thank you, Judge Wright.

18 THE COURT; you're welcome.

19 MR. GLEESON: May it please the Court, counsel and
20 the parties on both sides, women and men of the jury.

21 As you just heard from Mr. Collyard, Mr. Kelley
22 has set his sights on BMO Harris. He has brought this
23 lawsuit based on his claim that M&I Bank actually caused
24 \$1.9 billion in harm to PCI. More about that in a minute.

25 The evidence in this case is going to show you

1 that Mr. Collyard is just dead wrong on almost all of his
2 very serious allegations. It's going to show you that BMO
3 Harris is not liable to PCI at all. Not for \$1.9 billion.
4 Not for a penny.

5 We do agree on one thing. We know now and we've
6 known since late 2008 that PCI was a Ponzi scheme. You will
7 hear that in 2008 PCI pleaded guilty to crimes arising out
8 of the Ponzi scheme. Companies can plead guilty too, and it
9 did, along with Petters and Coleman and White. In fact,
10 we'll hear that Mr. Kelley entered the plea for PCI.
11 Petters, of course, as you know, was convicted and is
12 serving his prison time.

13 What was the scheme? A brief recap is, I think, a
14 little useful for you. This one was anything but simple, as
15 you just heard Mr. Collyard say. It was a particularly
16 complex criminal enterprise that evaded detection for more
17 than 14 years.

18 As you heard from Mr. Collyard, PCI claimed it was
19 buying electronics and selling electronics, and it got money
20 from a large number of investors to fund that business.

21 PCI's investors were hedge funds. As you may
22 know, hedge funds are a way sophisticated investors can
23 invest large amounts of money. Those hedge funds made
24 business decisions over many years to give PCI -- and when I
25 say "PCI," I, of course, mean Petters Company, Inc. --

1 billions and billions of dollars in exchange for huge
2 returns.

3 When the PCI Ponzi scheme went bust, PCI owed
4 those hedge funds investors lots of money. But let me just
5 take a second to ask a simple question, and I'm going to say
6 more about this in the course of my opportunity to address
7 you. Why wasn't PCI able to pay the hedge funds back? It's
8 because the Ponzi scheme that was PCI was essentially -- it
9 stopped working. It was like a game of musical chairs.

10 Since around 1994, long before PCI had any
11 involvement with M&I Bank, investors loaned money to PCI
12 with the agreement they would get their money paid back plus
13 interest.

14 But, as you heard, instead of using the money to
15 buy and then sell electronics, PCI just took the money from
16 new investors and paid it to old ones. The scheme could
17 stay hidden only as long as, to use the metaphor again, the
18 music kept playing on, that is, as long as the hedge funds
19 kept making new loans to PCI.

20 But in 2008, as I think all of you know, in 2008
21 the economy slowed and then it crashed, money dried up, the
22 music stopped. And, as you will hear, it stopped when
23 Deanna Coleman, Petters' chief lieutenant, who was in on the
24 Ponzi scheme for its entire 14-plus-year span, saw the
25 collapse coming and decided to turn herself in to the FBI

1 and tell the FBI what she knew.

2 After the agents raided PCI and arrested Petters,
3 PCI filed for bankruptcy. And some of the investors had
4 already gotten all of their money back plus a lot of
5 interest. They were safely seated in the remaining chairs
6 when the music stopped. But, in this big game of musical
7 chairs, those hedge funds that are at issue in this case had
8 not. They got stuck without a chair to sit in.

9 And Mr. Kelley's here all these years later -- and
10 this is important -- he's standing in the shoes of PCI.
11 He's not from the government. He's a respected lawyer, but
12 he's a lawyer in a law firm appointed to bring claims on
13 behalf of that bankrupt company. As I said, when PCI pled
14 guilty, Mr. Kelley entered the plea for it.

15 He doesn't bring claims on behalf of investors.
16 He can't. They can bring their own claims. He can only
17 bring claims in which he says -- and this is fundamentally
18 important -- in which he says PCI was itself the victim.

19 The evidence in this case will show he gets paid
20 out of the money he collects, and in this case he's asking
21 you to find that the men and women at M&I Bank caused PCI to
22 owe the \$1.9 billion to the hedge funds and therefore M&I
23 Bank and BMO Harris Bank, which I and my colleagues
24 represent, should pay the tab. That's what this case is
25 about.

1 The evidence, Ladies and Gentlemen, is going to
2 show you the following things:

3 M&I Bank did not make PCI into a Ponzi scheme.
4 PCI did that.

5 M&I Bank did not take any money from those hedge
6 funds investors that invested in PCI. PCI did that, too.

7 M&I Bank did not use those investors' loans to PCI
8 to pay off other investors, previous investors in this Ponzi
9 scheme, rather than run a legitimate business.

10 And it didn't make PCI unable to repay those loans
11 to the hedge funds, back to the hedge funds. That was all
12 PCI as well.

13 And, finally, M&I Bank didn't cause PCI to enter
14 into bankruptcy. The global financial collapse and the FBI
15 raid took care of that.

16 So what did M&I Bank do? It was a bank where PCI
17 had a deposit account for several years until the complex
18 scheme collapsed. The scheme was complex. The account was
19 simple.

20 Mr. Collyard just stood up before you and for
21 nearly an hour claimed that this PCI deposit account at M&I
22 Bank was somehow a centerpiece of this elaborate fraud. He
23 claimed that M&I employees -- you're going to see all these
24 employees; you're going to get to size them up for
25 yourselves -- knew about the scheme and with that knowledge

1 turned a blind eye, took steps to help Petters and PCI
2 perpetrate its massive fraud.

3 But, Ladies and Gentlemen, the evidence in this
4 case is going to prove exactly the opposite. For starters,
5 and it's very telling, he began with Sara Johnson. It's
6 telling he began with an unfounded claim of document
7 destruction. It's telling that he did not have a -- point
8 to a single witness, a single document to back up these very
9 serious claims that the people at M&I Bank were in on this
10 Ponzi scheme. He can't explain.

11 The evidence in this case is going to show you
12 that there's no explanation for how an elaborate Ponzi
13 scheme that lasted for so long could possibly have been
14 dependent on a single deposit account that PCI opened
15 substantially into the life of the scheme.

16 Most importantly, the evidence in this case is not
17 going to show even closely, anywhere close, support for this
18 allegation that any M&I employee knew about the Ponzi scheme
19 or had any role in participating in it.

20 You're going to hear throughout the course of this
21 trial from quite a few people at M&I Bank. You know, banks,
22 like any other companies, operate, act through people. And
23 you're going to see quite a few of the people who from the
24 relevant period, 2002 to 2008, worked at that bank.

25 And to one degree or another, because this case

1 depends upon it, Mr. Kelley is going to demonize just about
2 every one of them, claiming they were in on the fraud or
3 knew about it and deliberately turned a blind eye so they
4 wouldn't find out about it or that their inability to
5 remember details from nearly 20 years ago means they are
6 hiding something.

7 Of course they don't remember all those details.
8 These events happened 15 to 20 years ago, and PCI was one of
9 hundreds of customers these employees encountered at the
10 time. And it was not their most prominent customer. I'll
11 come back to that.

12 You're going to see for yourselves that these
13 women and men at M&I Bank were just doing their jobs
14 diligently, honestly. Again, you will get to size them up.
15 You make your own determinations. They are good, honest,
16 solid, hardworking members of this community. And like the
17 rest of the world outside of Petters' scheme, they had
18 literally no idea, no inkling.

19 I suggest to you, respectfully, you're going to
20 find the facts and at the end of this case you're going to
21 find they had no idea that Tom Petters was not the
22 upstanding, successful businessman, pillar of the community
23 that he held himself forth and people believed him to be at
24 the time.

25 Mr. Kelley's counsel is going to drag those

1 employees of M&I Bank through the mud -- watch; you'll
2 see -- hoping it will stick to at least one of them, because
3 he has to prove that an M&I employee actually knew about
4 this scheme or knew about suspicious circumstances and in
5 bad faith turned a blind eye so they wouldn't learn the
6 truth.

7 He's not going to be able to do that. You're not
8 going to see any of the evidence of the sort that you should
9 expect to see if Mr. Kelley's claims that they were
10 complicit in the way he has described in this Ponzi scheme
11 were true.

12 You're going to learn that no one at M&I Bank got
13 anything from PCI or Tom Petters. No million dollar checks
14 like Deanna Coleman got. No payments in any amount. No
15 Twins tickets. No chicken dinner. No nothing.

16 Mr. Kelley doesn't have any actual evidence or any
17 evidence of a motive on either side. There's no motive on
18 the side of PCI to put these M&I bankers in a position where
19 they would know about the scheme. There was certainly no
20 motive on their part or on the part of the bank to become
21 part of the scheme or turn a blind eye to it. More about
22 that in a few minutes.

23 Instead, as you just heard from Mr. Collyard,
24 Mr. Kelley is here almost 15 years later pointing to events
25 that he claims are red flags, claiming that, of course, they

1 put M&I employees on notice that PCI was nothing but a
2 fraud. And you're going to see that these things that
3 Mr. Collyard pointed to was not -- were not red flags at
4 all.

5 And just as importantly, the events -- and this is
6 so critical to this trial -- the events that Mr. Kelley and
7 his counsel will identify for you as red flags were all
8 dredged up with the benefit of an investigation that was
9 done years after Tom Petters was arrested and the scheme
10 collapsed.

11 This case is a monument to a term that you have
12 all heard, "hindsight bias." It's not uncommon. You know,
13 people convince themselves after a significant event happens
14 that there were signs of it all along before it happened,
15 even though in truth it really couldn't have been
16 anticipated at the time. There's other terms for it. Some
17 people call it Monday morning quarterbacking. That's what
18 this case is all about.

19 One way to look at it, to borrow the metaphor that
20 Mr. Collyard used, Mr. Kelley's case is kind of like a
21 detective story, a true crimes story. You flip all the way
22 to the end, to the last chapter, see how the story ends when
23 it was revealed that Tom Petters was not the upstanding
24 member of the community everybody thought he was, successful
25 local businessman. In fact, he was the villain, a huge

1 villain. His company was convicted of crimes, including
2 mail fraud, wire fraud, conspiracy.

3 And now Mr. Kelley is here, using today what he
4 knows today, only after the FBI raid and after all of his
5 staff's investigation, claiming that M&I Bank and its
6 employees should have, must have, actually did figure out
7 the ending of the story before Tom Petters was arrested.
8 This is a classic example of hindsight bias.

9 We do know now that Petters is in Leavenworth,
10 Kansas, in the federal prison there, a disgraced criminal,
11 presided over one of the most notorious Ponzi schemes in our
12 country's history.

13 But at the time PCI had an account at M&I Bank, as
14 I mentioned, he looked like something fundamentally
15 different, a successful local businessman. He owned several
16 legitimate businesses that I'm sure many of you heard of,
17 Polaroid, Sun Country Airlines. And, significantly, he also
18 owned some multiple -- he owned multiple retail businesses,
19 Fingerhut, Petters Warehouse Direct. He was a prominent
20 philanthropist as well, who gave millions to charities,
21 political causes. He was seen with celebrities and
22 governors at fundraisers and galas.

23 A perfect example of this looking at things
24 through the prism of hindsight is the document Mr. Collyard
25 showed you in which one of M&I Bank's AML, anti-money

1 laundering, analysts, Mary Pesch, analyzed PCI's account
2 activity after the raid, after Petters was arrested. It
3 really makes my case for me.

4 Mary Pesch had no idea before the arrest occurred
5 that there was a Ponzi scheme afoot, but she went back after
6 the scheme was publicly revealed, widely reported in the
7 news, and then she poured over the files from the PCI
8 account looking for clues.

9 Armed with that information, including that
10 Nationwide and Enchanted were actually sham vendors, which
11 no one knew at the time, she was able to piece it together.
12 She will tell you it took a week or more. Equipped with the
13 last chapter of the true crime story, it took her a week or
14 more to trace how the scheme worked, even once she already
15 knew that PCI was a scam.

16 So Mr. Kelley's contention that Mary Pesch and her
17 colleagues must have understood the Ponzi scheme at the time
18 in the moment that matters, before the Petters arrest, is
19 just not supported by the evidence. It's not going to pan
20 out.

21 We're asking you now to put aside these
22 after-the-fact claims that Petters and PCI's fraud, you
23 know, was obvious from the start and we're going to ask you,
24 as you listen to the evidence unfolds, to put yourself in
25 the shoes of those M&I Bank employees back at the time, 2002

1 to 2008. 2008 is when the scheme collapsed. It's only
2 fair. We're going to ask you to see things through their
3 eyes at the time that they saw them, they saw all the events
4 and they saw Petters.

5 One thing we'll ask you to bear in mind is the
6 period that we're talking about. It was from just after the
7 terrorism attacks on 9/11/2001 until the 2008 global
8 financial crisis. It's a long time ago. The Twins were
9 still playing in the Metrodome. Smartphones were just
10 hitting the hard market.

11 And I want to emphasize this because it's so
12 important. The question for you as jurors is not whether in
13 retrospect, with the benefit of hindsight, there were things
14 that M&I Bank employees could have or should have done. You
15 heard them say that they must have been aware and then they
16 turned a blind eye.

17 One very critical thing this case emphatically is
18 not about. I'm not going to give you legal instructions.
19 Judge Wright will give you the instructions and you will
20 listen to Judge Wright's instructions. You're going to
21 learn this case is not about seeing something suspicious and
22 not doing anything about it. This is no negligence case.
23 Negligence means coulda, shoulda, in hindsight could have
24 found out, maybe.

25 Mr. Kelley has his eyes on a much bigger prize

1 here. He has his eyes on a \$1.9 billion prize, and to get
2 there he has made extremely serious allegations that require
3 him to show much more than negligence. He's not going to be
4 able to meet that burden.

5 The evidence is going to prove to you -- you will
6 be the judges of the facts -- that the M&I employees in this
7 case were not only not negligent, but they did nothing
8 wrong -- I mean that, nothing wrong -- and that there will
9 be no liability here.

10 Before I get to the rest of my presentation,
11 obviously let me re-introduce myself, John Gleeson. You met
12 me earlier. You met my co-counsel, Keith Moheban, Morgan
13 Davis, Mike Schaper, Adine Momoh, Rich Spehr. This is Gina
14 Parlovecchio. And you met Jeff Jamison and Julie Rodriguez
15 Aldort, representatives from the client, from BMO Harris
16 Bank. We have the privilege of representing BMO Harris
17 Bank. I mean that, it is a privilege.

18 We all thank you in advance for your jury service.
19 As I mentioned to you this morning, it's a big deal to put
20 aside your lives for as long as this trial is going to
21 require you to do that, so we're all grateful.

22 The first critical thing I want to focus on is
23 what I just said. The M&I Bank employees did nothing wrong.

24 And let me start by giving you a little
25 background. In the mid '90s PCI was already a Ponzi scheme.

1 It began around 1994. There's no dispute about that. It
2 attracted investors by telling lies about a business it
3 pretended to be in, and those lies sustained the Ponzi
4 scheme for a long time.

5 It wasn't just the lies, but they were a critical
6 part of it, including for several years before PCI even had
7 an account at M&I Bank, this was a fully-baked,
8 up-and-running, successful Ponzi scheme before M&I Bank even
9 went on stage.

10 The -- 14 years is a long time to sustain a
11 scheme. One thing is for sure, you can't sustain a simple
12 scheme for 14 years. So how did Petters and his criminal
13 colleagues fool the world for so long? The evidence is
14 going to show you they were very, very good at it. And let
15 me focus on a few ways in which they did that.

16 One was Tom Petters' reputation. He had, as I
17 mentioned, a well -- everyone thought a well-earned
18 reputation as a successful legitimate businessman. Apart
19 from PCI, he owned many other companies, household name
20 companies like I mentioned already.

21 He played an important role. You're going to
22 learn from lay witnesses and expert witnesses that in that
23 period, 2002 to 2008, the fact that Petters appeared to be
24 what he claimed to be was a very important fact. That fact
25 alone played an important role in helping him to hide the

1 reality that other than -- you know, unlike his other
2 legitimate businesses, PCI was wholly a Ponzi scheme.

3 The other -- another way in which Petters,
4 Coleman, and White were able to conceal their criminality
5 was -- as I say, it was anything but a simple scheme.
6 Mr. Kelley, I suppose, from Mr. Collyard's opening, wants
7 you to believe that.

8 But you're going to see from the evidence in the
9 case that they made sure that the PCI business model was
10 extremely complex, extremely difficult to untangle. All
11 in all, over the life of the scheme, it involved over a
12 dozen phony companies, several phony vendors, more than
13 85 accounts spread over 20 banks.

14 It wasn't just his reputation and the complexity
15 of the scheme. Another way Petters and his colleagues hid
16 the scheme was by creating fake documents. They created
17 phony financial statements, fake wire transfer records, even
18 fake bank statements. They also made up fake invoices.

19 But the most important way in which PCI, in whose
20 shoes Mr. Kelley stands, and Petters and Coleman and White
21 kept the scheme a secret was the simplest of all ways, they
22 lied. They lied a lot and they were great at it. They had
23 to be. If people found out what they were doing, they could
24 literally spend the rest of their lives in prison, like Tom
25 Petters is.

1 Mr. Kelley has admitted that PCI lied to M&I Bank.
2 Here is Mr. Kelley's answer to questions posed to him in
3 this case answered by him under oath in this case:

4 "Admit that representatives of PCI made
5 misrepresentations about PCI's business to M&I."
6 Misrepresentations, you know this, that's lawyer for lies.
7 Mr. Kelley admitted it.

8 "Admit that the representatives of PCI took
9 actions to hide Petters' Ponzi scheme from M&I." And you
10 see here the trustee admits.

11 So Mr. Kelley himself, the plaintiff in this case,
12 admitted under oath that Petters lied to M&I Bank, hid the
13 scheme from M&I Bank, just like he did from the rest of the
14 honest world. But, somehow, here we are anyway.

15 It shouldn't be surprising that Petters and his
16 accomplices, Coleman and White, lied to M&I Bank. They had
17 every reason to believe that bank employees never figured
18 out the scheme. They had every reason to make sure they
19 never figured out the scheme.

20 For one thing, they would have gone to jail a lot
21 sooner because M&I employees -- you're going to learn this.
22 You're going to learn this from the people who are going to
23 be besmirched on that witness stand by Mr. Kelley's lawyers.
24 Their job was to ferret out suspicious activity and to
25 report it, not to hide it.

1 So it was important to keep the truth from the M&I
2 Bank employees. And another reason it was important was it
3 enabled PCI to continue using those employees and the bank
4 as pawns in the scheme, and that's what they did.

5 Here's an important point the evidence in the case
6 will show you: PCI took pains to keep its relationship with
7 M&I Bank as narrow as possible. And the most important way
8 it did that was making sure that PCI had nothing more than a
9 simple deposit account at M&I Bank.

10 A deposit account is the simplest relationship a
11 person or a company can have with a bank. It's really no
12 different than your own checking account. To open the
13 account you pretty much need a name, an address, a Social
14 Security number, or for a company a tax ID number.

15 Mr. Collyard -- you're going to see in this case
16 an e-mail where Ed Jambor and his supervisor, Shari Rhode,
17 discussed a potential loan to PCI.

18 And you heard Mr. Collyard talk about
19 cross-selling. Another, like, fundamental fact about
20 business banking is all business banks cross-sell. Of
21 course it's good for the bank and it's good for the
22 customer. They all want to deepen their relationship with
23 their clients.

24 But you're going to learn that whenever the topic
25 of a loan came up with PCI, it wanted nothing to do with it.

1 And the reason for that is if this narrow deposit account
2 relationship was expanded into a loan relationship, a lot
3 more information would have to go from PCI to M&I Bank,
4 financial statements, audit reports, tax returns.

5 More people from M&I Bank would have been assigned
6 to the account, meaning more scrutiny of PCI's business,
7 which was the very last thing that Petters and Coleman and
8 White and PCI itself wanted. So, instead, PCI made sure it
9 just kept that one -- just that deposit account
10 relationship.

11 And by keeping it so narrow, it also made sure it
12 only had a single business banker servicing the PCI account
13 at any given time, a banker who serviced hundreds of other
14 customers, which made it much easier for PCI to keep the
15 business banker relationship manager with the PCI account in
16 the dark.

17 How else do we know that M&I Bank wasn't involved
18 in the scheme run by Petters and his co-conspirators? The
19 best possible way, you're going to hear from Deanna Coleman.

20 She was on the inside of this scheme. And as I
21 mentioned, in 2008, as the end was nearing because the
22 economy was collapsing and the music was beginning to stop,
23 Coleman decided to cut her losses by turning herself in to
24 the FBI to report the massive fraud of which she was a
25 central part, a key player, for all 14-plus years of its

1 existence.

2 She agreed to cooperate with the government in the
3 hopes she would avoid a long prison sentence, like the one
4 Petters is serving now. She succeeded in that goal. You'll
5 learn, the evidence will show you about the terms of her
6 cooperation. It gave her a very powerful incentive to tell
7 the FBI the truth.

8 If she falsely withheld information about a person
9 or a company that was involved in this scheme, knew about
10 it, turned a blind eye so it could perpetuate itself, she,
11 too -- if she did not tell the FBI about a person or a
12 company that fit that description, she, too, could have
13 spent the rest of her life in prison.

14 She's testified under oath many times now. She
15 has never once said that M&I employees knew about the
16 scheme, and she's going to tell you that they did not know
17 about the scheme.

18 How else do we know? Mr. Collyard talked about
19 motive, about the bank's motive to get involved in a billion
20 dollar fraud, multi-billion dollar fraud. They had no
21 motive to participate in this scheme. The evidence is going
22 to show you that. Their motive would have been to report it
23 if they had any inkling of it. And as you listen to the
24 evidence, think about what it would take to motivate one of
25 these M&I employees.

1 And make no mistake about it. They talk about M&I
2 and they talk about BMO, and they want them both to be a
3 combined inanimate bank. But this case is about human
4 beings, individuals, decent honest people who are going to
5 come in here and say: No, we didn't know about this. We
6 turned a blind eye to nothing. We're honest. We're doing
7 our jobs, supporting our families.

8 And on the subject of motive, really, as you
9 listen to the evidence, you're not going to see any, but
10 think about what it would take to motivate someone to risk
11 their job, their reputation, their family's livelihoods
12 deliberately to knowingly help participate in this scheme,
13 to be aware of suspicious circumstances and deliberately
14 turn a blind eye so as not to find out bad information about
15 Petters and PCI. Think about what it would take for these
16 people to risk all that. You'd have to get a pretty big
17 benefit.

18 As I mentioned earlier, you're not going to see
19 anything like that, none of the evidence that I respectfully
20 suggest you should expect to see if Mr. Kelley were right,
21 no checks, no job offers, no cars, no fancy vacations, no
22 nothing.

23 Because Mr. Kelley doesn't have that evidence, the
24 evidence that you should expect to see, he wants you to
25 think -- you heard this in Mr. Collyard's opening

1 statement -- he wants you to think -- he says to you the
2 evidence will show. That's what's important in an opening
3 statement. It's what -- the lawyers tell you what the
4 evidence will show.

5 You watch. You watch the evidence to see if the
6 evidence supports the claim that PCI was so special to Ed
7 Jambor and Chris Flynn or anyone at M&I Bank that they would
8 do anything to please them, bend over backwards to help
9 them, even if it meant committing -- helping them commit a
10 fraud, even if it meant years in prison. And that's not
11 what the evidence is going to show you. It's just not.

12 You heard a lot about Mr. Collyard -- I'm sorry,
13 from Mr. Collyard, excuse me, about Ed Jambor and Chris
14 Flynn, who were -- who succeeded -- Chris Flynn succeeded Ed
15 Jambor as the relationship business banker for the PCI
16 account. You would think incorrectly, based on the opening
17 statement, it was their only account.

18 It wasn't even their biggest customer, and it
19 certainly wasn't the most profitable customer for the bank.
20 In fact, between -- this is all in connection with this
21 alleged motive. You're going to see the evidence that
22 between 2005 and 2008 PCI wasn't even in the top 15 banking
23 customers in Minnesota.

24 On this slide you can see the profits for the M&I
25 Bank's Minnesota business banking customers, just that

1 department, not commercial banking, just their business
2 banking customers overall compared to the profit it got from
3 the PCI account.

4 So you see in 2008, for example, there's a little
5 tiny blue line that barely makes it up off the bottom of the
6 chart. That roughly reflects the profit from PCI. And just
7 picking one year, you see on the chart, for example, M&I
8 Bank earned just \$81,254 from the PCI account, that tiny
9 little blue bar.

10 Well, you know, you might be thinking maybe the
11 bank was making a lot of money from Petters and his
12 companies in some other way. They weren't. The evidence is
13 going to show you that.

14 One of our experts, Karl Jarek, calculated the
15 maximum possible amount M&I Bank could have made from the
16 PCI account. It was an average, you will learn from his
17 testimony, of \$212,000 per year in terms of interest and
18 other charges. You're going to learn it from Mr. Jarek.
19 That was less than .023 percent of M&I's Bank income at the
20 time, 23/1,000ths of 1 percent.

21 So the revenue, looking at it from the perspective
22 as my adversary asked you to look at it from, the motive of
23 M&I Bank, the revenue was a drop in the bucket for the bank.
24 What it means is the maximum amount the bank could have
25 earned from this account, from the PCI deposit accounts,

1 from 2002 to 2008 is about 1.6 million total. And it
2 different earn nearly that much. That's the maximum amount
3 it could have, 1.6 million total. Compare that to the
4 1.9 billion that Mr. Kelley feels he's entitled to on behalf
5 of PCI, the criminal enterprise PCI, from the bank in this
6 case.

7 Let me make that point in a different way, make it
8 more accessible maybe. If a Minnesota family earning
9 \$50,000 per year got the same percentage benefit that M&I
10 Bank got from the PCI deposit account, maximum amount it
11 could have gotten, that family would end up with \$11.50.
12 Ask yourselves whether that would be enough temptation for
13 you to put your livelihood, your family, your liberty at
14 risk.

15 Mr. Kelley knows the bank didn't make any real
16 money from the PCI account, so you heard in Mr. Collyard's
17 opening a different angle. The evidence is going to show
18 you just how rich this angle is.

19 He asked you to believe that the M&I Bank
20 employees put their freedom at risk in the hopes they might
21 attract more bank business. I already told you that the
22 evidence will show you that PCI wanted nothing to do with
23 loans or any bank business that had anything to do with
24 providing information to M&I Bank. But Mr. Kelley's thesis
25 here is they were so eager to put their freedom at risk to

1 attract more bank business from PCI sometime in the future.

2 You know, one great thing about jurors and our
3 jury system is you don't leave your common sense at the
4 courthouse door when you come in. People don't risk -- and
5 the evidence is going to show you this -- people don't risk
6 spending years in prison because they hope they might --
7 emphasis on "might" -- get additional business for their
8 employer at some point in the future. In any event, there's
9 going to be no such evidence here.

10 You have all heard, I bet, in your lives the
11 expression "follow the money." If you follow the money in
12 this case, it leads right back to PCI, the entity that
13 Mr. Kelley represents, and it leads to Petters and the
14 insiders in the scheme. None of it leads to M&I Bank or any
15 of the people who work there.

16 So, to recap, before moving on to the so-called
17 red flags, Mr. Kelley admitted that PCI lied to and misled
18 M&I Bank. There will be no evidence of anyone at M&I Bank
19 benefitting in any way from PCI or Petters or Coleman or
20 White. And Mr. Kelley will not have any evidence that
21 anyone at M&I Bank had any idea what was going on, and
22 Deanna Coleman said that the bank was not in on the scheme.

23 So let me turn to these so-called red flags.
24 Mr. Kelley, huge dollars signs in his eyes, has spent years
25 combing through records from M&I Bank, PCI. He is the

1 trustee for PCI and others. And, as we've talked about, you
2 will see none of the evidence you should expect to support
3 claims like these, these serious claims. But he's got these
4 red flags, things that he claims, through the prism of
5 hindsight bias, screamed Ponzi scheme.

6 We're going to demonstrate to you through
7 evidence -- and let me step back a second. Mr. Kelley is
8 the plaintiff in this case. It's his burden. He has the
9 burden of proving these very serious claims by a
10 preponderance of the evidence.

11 But we are going to prove to you -- we have no
12 burden. We're going to prove to you that none of these
13 so-called red flags even whispered Ponzi scheme, let alone
14 screamed Ponzi scheme.

15 Let me start with these AML alerts. You heard
16 what -- you heard in Mr. Collyard's opening about anti-money
17 laundering and the Anti-Money Laundering Group at M&I Bank.
18 It's headquartered in Milwaukee. That's where the AML Group
19 was.

20 They had no interaction with PCI at all. No
21 reason whatsoever to help PCI carry out a Ponzi scheme. As
22 you will hear, their job was to monitor accounts across the
23 whole bank to look for particular types of activities that
24 bank regulations, federal laws, bank policy instructed them
25 to focus on.

1 And this goes back to what I mentioned earlier.
2 You know, we're here in 2022, but bear in mind, as the
3 evidence comes in, the time period in which these events
4 occurred.

5 The relationship between PCI Bank -- excuse me,
6 between PCI and M&I Bank began right around the time of the
7 terrorist attacks, September 11th, 2001. And if you were
8 old enough then, I'm sure you remember the fear we all felt
9 that another terrorist attack could happen.

10 You may remember, but you'll learn from the
11 evidence, that right after the attack Congress passed new
12 laws designed to make sure that banks could identify
13 potential terrorist activity. Federal regulators told banks
14 to focus on signs of terrorist activity, like transactions
15 to or from foreign countries.

16 Regulators were also focused -- and you'll learn
17 this from the evidence, from those trainings that
18 Mr. Collyard alluded to in his opening statement --
19 regulators were focused on transactions involving large
20 amounts of cash, think duffle bags full of hundred dollar
21 bills. Well, the evidence is going to show you that PCI did
22 none of those things. Its transactions were not with
23 foreign countries, didn't involve large amounts of cash.

24 You'll hear from several members of M&I's -- M&I
25 Bank's AML Group. You see a few of them on this slide.

1 They are going to tell you how hard M&I Bank worked on its
2 AML program.

3 If you listen to these witnesses and you consider
4 the evidence -- again, put yourself in their shoes, think
5 about -- listen to the evidence about what they were
6 correctly focused on at the time, the terrorist activity,
7 money laundering involving large amounts of cash.

8 They were not focused on, nor were they told to
9 focus on, community leaders and businessmen of Minnetonka --
10 from Minnetonka that Tom Petters held himself out to be and
11 that everyone believed him to be.

12 The evidence is going to show you that PCI was
13 revealed to be a Ponzi scheme right before the arrest of
14 Bernie Madoff. I bet many of you heard of him, remember
15 him. He ran an even bigger Ponzi scheme, biggest one in US
16 history. It went bust shortly after the Petters scheme did,
17 in the latter part of 2008.

18 But in the years before Bernie Madoff was
19 plastered over the front pages of all of the papers, Ponzi
20 schemes, as my kids would say, weren't a thing then. Right?
21 They were -- they weren't what people in the AML Group were
22 focused on. They were not what people in the banking
23 industry writ large were focused on. They were not what the
24 regulators were focused on, what law enforcement was focused
25 on.

1 You're going to learn that back then a lot of
2 very -- you know, Judge Wright said it exactly right,
3 "popularly known as a Ponzi scheme." That's true now.
4 You're going to learn that very experienced bankers and bank
5 employees hadn't even heard the phrase "Ponzi scheme" before
6 Tom Petters and Bernie Madoff were arrested and they hadn't
7 been taught to look for signs of one.

8 It's only through hindsight bias that Mr. Kelley
9 is claiming that bank employees should have spotted, could
10 have spotted the Ponzi scheme before 2008. And even that
11 isn't enough. This is not a negligence case. This is not
12 shoul da or coulda.

13 You're going to see people beaten up on this
14 witness stand because much more serious allegations have
15 been made against them, and Mr. Kelley is not going to be
16 able to prove those allegations.

17 But I do want to be clear about this. Just
18 because Ponzi schemes weren't a thing, they weren't the
19 focus of any bank's AML team before 2008, that doesn't mean
20 that PCI's account wasn't regularly and properly and
21 appropriately reviewed and monitored by M&I's AML
22 department. The evidence is going to show you it was.

23 M&I Bank had a variety of monitoring systems to
24 help its AML analysts do that work, to place potentially --
25 to identify potentially suspicious activity in all of its

1 customer's accounts, including PCI's account.

2 One was called Searchspace, which you heard a
3 little bit about from Mr. Collyard. It was a program that
4 M&I Bank implemented in 2005 after a rigorous vetting
5 process. Searchspace was the gold standard at the time in
6 monitoring programs. As you heard from Mr. Collyard, PCI's
7 transactions triggered automated alerts in Searchspace.

8 I'm going to make a very important point to you
9 right now about what the evidence will show you.
10 Mr. Collyard toggled back and forth between "alert" and
11 "alarm." And there's no reason for you right now -- you
12 just came in here -- to understand the fundamental
13 distinction and why he has started the case by conflating
14 "alert" and "alarm."

15 He suggested to you the alerts that were -- that
16 came up through the software, through the monitoring devices
17 at M&I Bank, AML analysts' offices were suspicious activity,
18 that they were alarms. And the evidence isn't going to
19 support the narrative.

20 You're going to hear from the analysts. You're
21 going to hear from their supervisors. You're going to hear
22 from an expert witness, Charles Grice.

23 And I guess we're in the business of introducing
24 the experts. Mr. Grice, there he is. Hello, sir.

25 And you're going to learn from all of them -- and,

1 again, this is a very important distinction -- that an alert
2 is just that, it's an alert. It's not in and of itself --
3 this is a bedrock principle of AML analyst monitoring. It's
4 not in and of itself evidence of suspicious activity.

5 All it does is prompt an analyst to look further
6 at the customer's account activity and the transactions that
7 triggered the alert to see whether the alert actually
8 qualifies as suspicious activity under the bank's policies.

9 And that's exactly what those AML analysts will
10 tell you that they did. They used the tools available to
11 them to review each alert. They acted consistent with bank
12 policies at the time, with regulatory requirements at the
13 time, and determined that the activity wasn't unusual or
14 suspicious -- and it wasn't -- because the activity they saw
15 made sense given what they knew. They saw that -- the
16 activity they saw made sense, and it did, given what they
17 knew at the time about Tom Petters and his companies and the
18 PCI account activity.

19 Here's an example of an alert. As you see, a
20 member of the AML team at M&I Bank reviewed the alert,
21 explained why the alert was closed. The account activity
22 was expected for a large business such as this and her
23 manager approved that decision, confirming that activity
24 appears consistent and expected for this customer and type
25 of business.

1 Now, Mr. Kelley claims now, years later, that this
2 wasn't enough and the analysts should have done more because
3 now we know that Tom Petters was a fraud. But as you listen
4 to the evidence, ask yourselves why would they have done
5 that in the moment, not now after reading the last chapter
6 of a true crime novel? Why would they have done that given
7 what they knew and what they were told and what they were
8 trained to do at the time?

9 Think about it. They knew Petters owned big
10 businesses, big legitimate businesses. They believed PCI
11 was part of a large collection of legitimate companies.
12 They saw that PCI had been wiring large amounts of money on
13 a regular basis into that account for years.

14 As I mentioned, they didn't start this fraud
15 scheme, this Ponzi scheme when they came to M&I. It was up
16 and running and working just fine by the time it got to M&I,
17 and the analysts saw the same pattern of activity going back
18 to the beginning of the account.

19 The evidence is going to show you that AML
20 analysts had no idea who or what Nationwide or Enchanted or
21 these other what we know now are fraudulent companies were,
22 and they didn't need to to do their jobs properly. There
23 was no reason for them to know.

24 You're going to learn this from the evidence. The
25 bank's policies at the time, which were driven by regulatory

1 mandates and federal laws, did not require analysts to learn
2 who the bank's customers were, right? Didn't require them.
3 PCI was the customer. There's nothing in this case, there's
4 no evidence in this case they were required to learn about
5 who PCI, their customer, was doing business with.

6 So from the perspective of those AML analysts,
7 there was nothing about any of these wires that seemed out
8 of the ordinary or required further review. Policies didn't
9 require it.

10 You know, Mr. Kelley and his lawyers can talk
11 about the amounts of money that went in and out of the PCI
12 account at M&I Bank all he wants. It wasn't even their
13 biggest customer. It doesn't change the fact that AML
14 analysts did their jobs properly and reviewed every alert
15 properly on the PCI account, as they did for all their other
16 accounts. You will get to see them. You will make that
17 judgment based on the evidence in the case.

18 He's going to criticize -- these lawyers are going
19 to criticize these AML analysts in Milwaukee. The evidence
20 is going to show --

21 MR. COLLYARD: May we approach?

22 THE COURT: Pardon me?

23 MR. COLLYARD: May we approach?

24 THE COURT: Is there an objection?

25 MR. COLLYARD: Yes.

1 THE COURT: Okay. You may.

2 Members of the Jury, if you would like to stand
3 and stretch while we have this sidebar, you may.

4 **(At sidebar)**

5 MR. COLLYARD: Your Honor, he keeps talking about
6 how we're going to put these people up on the stand and
7 we're going to beat them up and we're going to criticize and
8 we're going to do this and do that. He's talking about
9 argument. I've sat here and listened to it. It's gone on
10 for a very long time.

11 MR. GLEESON: That's what the evidence is going to
12 show, that he's going to beat them up. And if I'm wrong
13 about that --

14 THE COURT: The evidence is going to show?

15 MR. GLEESON: The testimony.

16 THE COURT: How is the evidence going to show that
17 he's going to beat them up? What evidence of beating up is
18 going to happen?

19 MR. GLEESON: The way the testimony -- the way the
20 examinations will be conducted is the evidence. It's their
21 demeanor. They are going to -- Judge, sorry. I'll walk
22 away from it.

23 THE COURT: The objection is sustained.

24 MR. GLEESON: Thank you, Judge.

25 MR. COLLYARD: Thank you, Your Honor.

1 **(In open court)**

2 MR. GLEESON: Thank you, Judge.

3 Let me turn to another thing that Mr. Kelley's
4 counsel mentioned in his opening statement. I'll talk to
5 you about the evidence on this topic, which is these
6 retailer payments into the PCI account.

7 Mr. Collyard said that Ed Jambor and Chris Flynn,
8 the business bankers I introduced you to earlier, somehow
9 were supposed to have known that PCI was a Ponzi scheme
10 because of the activity in PCI's account and that's how
11 you're going to know they knew that the scheme existed and
12 that they participated in it. You're going to hear from
13 Mr. Jambor and Mr. Flynn, Ed Jambor and Chris Flynn, that
14 that's not true.

15 First of all, this theory is based on a notion
16 that Ed and Chris were paying a lot of attention to the
17 specific details of how PCI was supposedly running its
18 business, that they knew these random companies, which were
19 fronts of fraud, Enchanted and Nationwide, were supposed to
20 be the wholesalers that were supposed to be selling
21 merchandise to PCI.

22 The reality, you'll learn from the evidence, from
23 their testimony, is that Chris Flynn and Ed Jambor had never
24 heard of Nationwide or Enchanted, let alone what business
25 they were supposed to have been doing with PCI.

1 Second, you will see no evidence that Ed and Chris
2 understood that the retailers were supposed to be making
3 payments directly into PCI's account, as opposed to
4 indirectly through any of the dozens of other companies that
5 Petters owned, through any of the other banks where Petters
6 or PCI had their bank accounts, or even through the
7 wholesalers themselves.

8 Mr. Collyard showed you an e-mail -- you're going
9 to see it again during the trial -- from which you're going
10 to be asked to infer that Ed Jambor and Shari Rhode were
11 made aware that retailer payments were to be made directly
12 by the retailers into the PCI account. The e-mail doesn't
13 say that. You'll see it. It didn't say what the names of
14 the supposed retailers were. The next time you see the
15 e-mail at trial, read it carefully for yourselves. You'll
16 see what I mean.

17 Third, if Ed Jambor and Chris Flynn had
18 believed -- and the evidence is going to show that they did
19 not -- that retailers were supposed to be making payments
20 directly into the PCI deposit account, there will be no
21 evidence that they looked to see whether that was happening
22 or they had any reason to believe that -- as business
23 bankers who worked there, that they had any reason as
24 business bankers to look to see where the incoming deposits
25 were coming from.

1 And that's because, what you will learn from them
2 when they testify, Ed and Chris were focused on what
3 business bankers focus on, which is completely different.
4 It's the average deposit balance in the account, that is,
5 the amount of money that sat in the PCI account overnight.
6 That's the money, you will learn, that banks use to loan to
7 other customers. That's how banks make money off our
8 checking accounts; they loan the money to other customers.

9 So, as you will hear, that's what Ed and Chris
10 were focused on because when someone, when an entity, a
11 person or a company, has just a deposit account, it's the
12 average deposit balance that makes the profit for the bank.

13 Here's an example of the kinds of reports that Ed
14 and Chris, Jambor and Flynn, got on a regular basis. These
15 reports track the profitability of their customers. You can
16 see a column on the report. You will see these as the trial
17 unfolds. It says average deposit balance for the PCI
18 account and others.

19 And although lots of money went in and out of the
20 account, the average deposit balances were not especially
21 high compared to the numbers Mr. Kelley's counsel threw
22 around here. It was about 3 million. That's what Ed and
23 Chris were focused on.

24 They didn't know this was a Ponzi scheme. They
25 were focused on the average deposit balance in the simple

1 deposit account. That was the only relationship that PCI
2 made sure it had with M&I. They weren't focused on how much
3 was going in or out, and they were not focused on who was
4 doing it.

5 And you know what else? Even if Chris Flynn and
6 Ed Jambor had pulled up PCI's own account statements and
7 looked at the transfers, the wire transfers in and out of
8 the account, those account statements didn't show who the
9 money was coming from either.

10 Here's an example of an account statement for
11 PCI's account. There are numbers here for the transactions,
12 but you don't see any names of who was sending or receiving
13 the money. That information is not there.

14 So this narrative, again, for a substitute of
15 actual proof of involvement in this Petters scheme, this
16 narrative about the structure of the business and retailer
17 payments going directly in and they knew there were no
18 retailers payments going in and therefore, a-ha, they knew
19 it was a Ponzi scheme, it's not going to be supported by the
20 evidence.

21 Mr. Collyard pointed to and alluded to these
22 Deposit Account Agreements in 2008. These are the types of
23 things that Ed and Chris and all bankers do for their
24 customers. It's called customer service.

25 Wait until you actually hear the evidence about

1 this effort to have PCI and M&I Bank set up separate
2 custodial accounts from which some of the money in the PCI
3 account would be removed and deposited into.

4 A request from PCI Bank of its relationship
5 banker, Chris Flynn: Would you set up these accounts? They
6 get an outside lawyer. They see what it's going to involve
7 in terms of work for the bank, what it's going to cost, who
8 is going to pay the cost. Get the lawyer.

9 There's not just one agreement. There's an
10 agreement between the bank and these hedge funds,
11 Interlachen, Richie, Palm Beach, the hedge funds who PCI
12 couldn't pay back and that's why they are here.

13 There was one agreement between the bank and the
14 hedge funds -- excuse me, and PCI to do what the customer
15 asked the bank to do, set up these accounts, and then a
16 separate agreement between the bank and the hedge funds
17 themselves. It's like: You want us to do this? You're
18 going to have to make sure the bank is protected.

19 They did -- this is a perfect example of how you
20 take completely appropriate, good service by a banker and,
21 with the -- through the prism of hindsight bias, distort it
22 into something sinister. You're going to see the evidence
23 about these Deposit Account Agreements, and they are not
24 going to support the trustee's, Mr. Kelley's case.

25 Let me turn to one of two more topics I want to

1 address with you, and it's causation. In order to obtain
2 a single dollar from BMO Harris Bank, let alone the
3 \$1.9 billion Mr. Kelley seems to think he's entitled to, he
4 has to prove -- PCI has to prove that M&I Bank's actions
5 caused PCI to owe the 1.9 billion to the eight hedge funds
6 that invested in PCI. He won't be able to do that.

7 The evidence is going to show that the scheme, as
8 I mentioned, existed for years. M&I Bank wasn't needed for
9 this scheme to get up and running.

10 As I said before, M&I Bank didn't cause PCI to lie
11 to the investors; didn't cause the investors to give PCI
12 their money; certainly didn't cause PCI to be unable to pay
13 the people, the entities, the hedge funds, it owed money to
14 when the music stopped in 2008.

15 PCI had relationships with many other banks.
16 You're not going to hear any evidence that demonstrates that
17 M&I Bank was the only place PCI could have had a deposit
18 account like this.

19 This theory is no different than blaming the
20 electric company that powered PCI's offices for the entirety
21 of the Ponzi scheme or the company that sold them the
22 computers they used to make up their phony documents. And
23 then he's saying that he's entitled to have them pay the
24 \$1.9 billion?

25 One other thing the evidence will show you, and

1 I'll just allude to this briefly. Wait until you see the
2 evidence about this Frank Vennes.

3 Frank Vennes was a convicted criminal. He came
4 into the bank in the early part of this period, from 2002 to
5 2008, and asked the bank for a loan so Vennes could invest
6 in PCI. And the bank said, no, we're not going to deal with
7 a convicted criminal, no thanks. That's what happened.

8 And, again, now we've got this -- we've got to
9 find some substitute for actual evidence, so now you're
10 going to hear Chris Flynn be questioned about that. You're
11 going to hear from the evidence that he did exactly what any
12 good business banker would do.

13 One other thing about these Deposit Account
14 Agreements. Two of the three hedge funds that entered into
15 those agreements in 2008 made their investments in PCI
16 before they signed the agreements.

17 So when -- the evidence is going to show you, by
18 way of causation, that it could not be the case that the
19 bank's involvement, which was completely blameless in those
20 agreements, could not possibly have caused any harm because
21 the investments were made before the agreements were signed.

22 And the third hedge fund, Palm Beach, got more
23 money back than it lost after the agreement was signed.

24 So nothing about those agreements could possibly
25 have caused PCI's inability, having defrauded those hedge

1 funds, could have caused PCI's inability to pay them.

2 One last thing on this topic. You're going to
3 conclude, based on the testimony, that M&I Bank, as I told
4 you, did nothing wrong with these Deposit Account
5 Agreements, but you may want to ask yourselves as the
6 evidence comes in why Mr. Kelley seems to think that even if
7 they had done something wrong, he is entitled to
8 \$1.9 billion.

9 Pay attention to the evidence, please. Pay
10 attention to the sequence of events. Those agreements,
11 those Deposit Account Agreements, all happened in 2008, just
12 a few months before the scheme collapsed.

13 Mr. Kelley is obviously determined to tag M&I in
14 the first instance, BMO Harris Bank ultimately with all of
15 those hedge funds' losses over all the years. But when you
16 see the evidence on which he relies and when the events on
17 which he relies occurred, you're going to wonder how that
18 could possibly be right.

19 Mr. Collyard claimed that M&I Bank allowed PCI to
20 send money out of its own account to people like Coleman and
21 Petters. That's what banks do. They let you use your
22 checking account, your deposit account the way you want to
23 use it. That's what a deposit account is all about.

24 Mr. Kelley's expert witness won't even be able to tell you
25 how much money he thinks M&I shouldn't have let leave the

1 account or why.

2 And M&I Bank is not in the business of policing
3 what money these criminals, PCI, Petters, Coleman, and
4 White, what they do with the money in the account. Their
5 job is to make sure if the check is properly signed and
6 there's money in the account, to honor it. It's not their
7 money. That's why the deposit account being so narrow is so
8 important.

9 Let me finish this section of my opening statement
10 the way I started it. Separate and apart from the fact that
11 the bank did nothing wrong, you're going to learn from the
12 evidence that M&I Bank -- to hold M&I Bank responsible for
13 the harm that PCI and Petters and Coleman and White caused,
14 and they are all convicted of crimes, is just -- there's no
15 basis of it in the evidence.

16 Let me turn to the last section, you will be happy
17 to hear, the last section of what I want to tell you now.
18 Obviously, you will hear a lot more during the course of the
19 trial. Mr. Collyard or one of Mr. Kelley's lawyers and I
20 will get a chance to speak to you in summation. But the
21 last thing I want to talk to you about is this document
22 destruction point.

23 The substitute -- you're going to learn from the
24 evidence that a substitute for actual evidence of
25 complicity -- and make no mistake about it, the allegation

1 here is M&I Bank was complicit in a Ponzi scheme. The last
2 substitute for actual evidence of that is this allegation
3 that M&I Bank intentionally destroyed documents to prevent
4 Mr. Kelley from discovering evidence that would be
5 unfavorable to M&I Bank in this case.

6 Once again, look, it's not about us. It's about
7 the evidence. It's about the real, like, three-dimensional
8 human beings that Mr. Kelley has accused of serious
9 activity.

10 You're going to hear from John Vanderheyden. He
11 was the head of IT at M&I Bank. He led the IT department
12 during the relevant period. He's going to tell you in 2009
13 he and his colleagues in the IT department began planning a
14 project to consolidate M&I Bank's 11 regional servers across
15 the country. The project was necessary because M&I Bank's
16 software and hardware were out of date. It happens.

17 As part of this server consolidation project, the
18 IT department didn't save old backup tapes that contained
19 e-mails. They thought they didn't need to. This was
20 happening in 2009, 2010, early 2011. They thought they
21 didn't need to because the bank had adopted software that
22 captured every single e-mail going all the way back to March
23 of 2005.

24 Unfortunately, what the IT department didn't
25 consider was that the backup tapes contained the last copy

1 of e-mails from further back in time, pre-March of 2005.

2 So all of the e-mails from March 2005 forward --
3 right? -- from three and a half years before this scheme
4 collapsed forward were preserved, but some of the e-mails
5 from before that date were not. It was a mistake, no doubt
6 about it. We don't run from that. They should have
7 preserved the tapes. But in today's world, where companies
8 have massive amounts of data, those mistakes happen.

9 And the really important thing about this aspect
10 of the case is not that those backup tapes were recycled,
11 but whether it was done innocently. That's the key. And
12 the evidence will show, we'll prove to you that it was done
13 innocently. It had nothing to do with this case. The IT
14 department didn't even know what was on the backup tapes
15 that they recycled.

16 Mr. Kelley's counsel told you about some old
17 backup tapes found in 2014 at one of BMO Harris's offices in
18 Wisconsin. Let's be clear about one thing that the evidence
19 will show you. You're going to hear they found those tapes
20 because they were sent to look for them, specifically to
21 look for them. They were not trying to hide them.

22 You will hear from them. They were asked to look
23 for tapes dated before March of 2005, and what they found
24 were tapes that had dates on them and the earliest one was
25 dated in 2007, August of 2007.

1 So you're going to learn from the evidence that
2 they honestly did not think that they were among the tapes
3 they were asked to look for.

4 A few years later IT employees searched again for
5 tapes, again, for the right reason. Found them and
6 processed them. Nothing was deleted in 2014 or later.

7 You're going to learn from the evidence that this
8 sideshow, this document destruction allegation is a
9 substitute for actual evidence of the allegations, the
10 central allegations in the case.

11 BMO Harris has produced literally millions of
12 documents to Mr. Kelley, including from the backup tapes
13 that BMO Harris was able to recover. Those documents
14 included all e-mails after March 2005 that Mr. Kelley asked
15 for. They included all non-e-mail documents for every year
16 for which he asked for them, like Word documents, letters,
17 faxes, account statements, meeting details that you will
18 hear about.

19 It included the entire e-mail boxes of over a
20 dozen employees, including from before 2005, and one was Ed
21 Jambor's. Ed Jambor was the relationship manager from 2002
22 to two thousand -- August of 2007, and the backup tapes
23 contained his entire e-mail box.

24 One other thing you will learn about Ed Jambor.
25 Coincidentally, in March of 2005 in his performance

1 evaluation his supervisor said: Could you use e-mail more?
2 You write in handwriting. We can't read your handwriting.
3 It happened exactly at that point, March 2005.

4 On top of that, Mr. Kelley is the trustee of the
5 bankrupt estate of PCI. He's got all of PCI's documents.
6 It includes all the e-mails from M&I Bank employees,
7 documents from third parties, like investors.

8 No one at PCI had ever discussed the Ponzi scheme
9 with anyone at M&I Bank by e-mail or any other way. The
10 evidence will show you that. But if they had, Mr. Kelley
11 would have those e-mails.

12 And you just heard from Mr. Collyard's opening,
13 and you're going to hear it a lot during the trial, about
14 these missing documents. But you're going to hear from the
15 real people who were involved, and you're going to make your
16 own determination about whether they were intentionally
17 destroyed to keep evidence from the trustee in this case,
18 from Mr. Kelley in this case.

19 Okay. I'm just about done. Just a couple of
20 minutes. And thank you for your attention. I appreciate
21 it.

22 I didn't cover everything. Nobody can in an
23 opening statement. The evidence is going to reveal other
24 defects in Mr. Kelley's case, but we'll deal with them at
25 the close of the case when we get to speak to you again in

1 summation.

2 As the evidence unfolds, I want you to please keep
3 in mind the most important aspects of the case.

4 First, the human dimension. Just a group of
5 honest, hardworking people, doing their jobs with no reason,
6 no financial motive, no financial incentive, no reason
7 whatsoever to risk their lives -- their liberty, rather, and
8 their jobs and their family's livelihood to help Petters and
9 Coleman and White perpetrate a Ponzi scheme.

10 Again, bear in mind hindsight is almost
11 inevitable. We always look back on things in a way through
12 a lens knowing what happened in the meantime. But judge
13 their actions by putting yourselves in their shoes at the
14 time. It's the only way to be fair to them. And all
15 companies, including M&I and BMO, it's the only way to be
16 fair to the banks. Resist the temptation to judge them
17 through the lens of hindsight bias.

18 And, lastly, look, do those M&I Bank employees and
19 the M&I Bank make a mistake? Absolutely. Like so many
20 others, they fell for Tom Petters and Deanna Coleman and Bob
21 White and PCI. That's all. That was their only mistake.
22 And they weren't the only ones. A lot of people did. That
23 is no basis to hold BMO liable for \$1.9 billion. That's no
24 basis to hold them liable for even a penny.

25 Thanks again for your attention. Thank you, Your

1 Honor.

2 THE COURT: Members of the Jury, you may stand and
3 take a stretch break at your seats now. We'll begin with
4 our first witness.

5 (Pause)

6 THE COURT: Are we ready?

7 MR. COLLYARD: We're ready, Your Honor.

8 THE COURT: We will -- please be seated. We will
9 end with the jury today promptly at 5:00 o'clock, and I will
10 give them recess instructions before that which will be
11 about a minute long. But I just want to give you that
12 understanding as you begin your examination.

13 MR. COLLYARD: Thank you, Your Honor. The
14 plaintiff calls Ms. Sara Johnson, Your Honor. Our first
15 witness is Sara Johnson, who was one of BMO's anti-money
16 laundering analysts that reviewed the anti-money laundering
17 alerts was raised on PCI's account. She will appear by
18 video.

19 And there are various exhibits that will be the
20 subject of Ms. Johnson's testimony. And we are calling
21 Ms. Johnson adverse, Your Honor. Plaintiff's exhibits for
22 this video deposition will be P-180, P-183, P-223, and
23 P-248, which plaintiff offers into evidence.

24 MR. MOHEBAN: Your Honor, we have no objection to
25 the admission of these exhibits.

1 THE COURT: The exhibits are received.

2 MR. COLLYARD: Lastly, Your Honor, the parties had
3 agreed on a joint jury instruction concerning deposition
4 testimony that we would ask to be read to the jury as well,
5 and that is Jury Instruction Number 10. And I have copies
6 here for the Court if the Court would like to have them.

7 THE COURT: I would, please.

8 MR. COLLYARD: May I approach, Your Honor?

9 THE COURT: Yes, you may.

10 (Document handed to the Court)

11 THE COURT: And I take it counsel does not object
12 to this instruction; is that correct?

13 MR. GLEESON: That's correct.

14 THE COURT: Okay. Members of the Jury, testimony
15 will now be presented to you in the form of a deposition. A
16 deposition is the recorded answers a witness made under oath
17 to questions asked by lawyers before trial. The deposition
18 testimony to be offered was electronically video recorded
19 and that recording now will be played for you.

20 You should consider the deposition testimony and
21 judge its credibility as you would that of any witness who
22 testifies here in person.

23 Videos have been edited to remove things like
24 objections and statements by attorneys, and you should not
25 concern yourself with such edits since I have determined

1 that the videos fairly represent the testimony.

2 And, as I indicated, we will be ending at -- our
3 session today at 5:00 o'clock, and I will need at least two
4 minutes to instruct the jury before they recess.

5 Are we ready to proceed?

6 MR. COLLYARD: Yes, Your Honor, we are.

7 THE COURT: You may.

8 (Sara Johnson)

9 VIDEO DEPOSITION PLAYED

10 BY MR. COLLYARD:

11 Q. Can you please state your full name for the record.

12 A. Sara Ann Johnson.

13 Q. Who are you currently employed by?

14 A. Bankers Toolbox.

15 Q. And when did you begin your employment there?

16 A. February 2017.

17 Q. Before that time were you at BMO Harris Bank?

18 A. Yes.

19 Q. When did you leave BMO?

20 A. February 2017.

21 Q. Now, you started working at a bank called M&I Bank; is
22 that right?

23 A. Correct.

24 Q. And when did you start working there?

25 A. In 1994.

1 Q. And you stayed with M&I Bank until BMO and Harris Bank
2 merged and, I guess, acquired M&I Bank; is that right?

3 A. Correct.

4 Q. What year was that?

5 A. I think it was the end of 2010.

6 Q. You went to the AML department about April of 2005?

7 A. April 2005, um-hum.

8 Q. And then you -- and when you moved to the AML Group, you
9 became an AML analyst; is that right?

10 A. Correct.

11 Q. And how long were you an AML analyst?

12 A. I held many different positions, analyst investigator,
13 team lead. I mean, I was in the AML department until I left
14 in 2017.

15 Q. So in April of 2005 you started as an AML analyst and
16 then eventually you became a lead analyst; is that right?

17 A. Yes, I did.

18 Q. And do you recall about when that was?

19 A. I'm thinking in terms of it happened when we moved
20 offices, so I'm trying to remember if I remember when we
21 moved offices. 2009 or 2010.

22 Q. And between that time did you hold any other positions
23 in the Anti-Money Laundering Group at M&I Bank?

24 A. I would -- I did receive a promotion, an analyst
25 promotion, at one point.

1 Q. Before you were a lead analyst, was the highest position
2 that you had called an Analyst II?

3 A. I don't remember.

4 Q. Were there different roles if you were an Analyst I
5 versus an Analyst II or were you essentially doing the same
6 job with a different title?

7 A. No, you had different responsibilities.

8 Q. Do you remember what any of those were?

9 A. I partook in training, helped in training new analysts.
10 That was a big part of it.

11 Q. When you -- when you helped partake in training other
12 analysts, describe just generally what that involved.

13 A. That involved taking them on, you know, kind of a start
14 to finish process on what we did on a daily basis so that
15 they could get up to speed on how to work alerts.

16 Q. And about how many years did you do that?

17 A. I don't remember exactly.

18 Q. Did that include training them in Searchspace?

19 A. Yes.

20 Q. And how to use Searchspace?

21 A. Yes.

22 Q. And so, for example, would that include training them on
23 how to investigate an alert in Searchspace for incoming and
24 outgoing wires?

25 A. Yes, it would.

1 Q. And so after 2009 did you stay in the Anti-Money
2 Laundering Group?

3 A. Yes.

4 Q. And what were your roles after 2009, if you can
5 remember?

6 A. I would have been a lead analyst until 2014, when I
7 became a manager.

8 Q. What was your role as a manager in the Anti-Money
9 Laundering Group?

10 A. I oversaw the SAR Group.

11 Q. Can you just explain briefly what a SAR is.

12 A. Sure. A SAR is a Suspicious Activity Report that a bank
13 will file on a customer if they deem the activity
14 suspicious.

15 Q. Do you have an understanding that you're here today
16 because there's a lawsuit against BMO?

17 A. Yes.

18 Q. And that lawsuit involves the bank account that was held
19 at M&I Bank for a company by the name of Petters Company,
20 Inc.?

21 A. Yes.

22 Q. And do you remember that you had worked with respect to
23 reviewing and investigating anti-money laundering alerts at
24 M&I Bank that pertained to Petters Company, Inc.?

25 A. I don't remember the exact alerts that I worked, but I

1 know that I worked alerts, a lot of alerts, during that
2 timeframe.

3 Q. Do you remember the company Petters Company, Inc.?

4 A. Yes.

5 Q. And do you remember that you did work on alerts
6 pertaining to Petters Company, Inc.?

7 A. Yes.

8 Q. What's your understanding as to what this case is about?

9 A. As far as what I've read on the internet, which was from
10 Wikipedia, so you can take it for what it's worth, that
11 there was a Ponzi scheme involving Petters and his
12 companies.

13 Q. And do you have an understanding that that Ponzi scheme
14 was run out of the bank account at M&I Bank?

15 A. To some degree.

16 Q. Did you have an understanding that the Ponzi scheme that
17 we're talking about is the second largest Ponzi scheme in US
18 history?

19 A. I did know that.

20 Q. You did know that?

21 A. Yes.

22 Q. And how did you become aware of that?

23 A. On the internet.

24 Q. So I'm going to talk about the PCI account or the
25 Petters Company, Inc. account, and when I do that I'm going

1 to be -- what I'm doing is I'm talking about the depository
2 account that was held at M&I Bank for that customer. If I
3 do that, will you understand what I'm talking about?

4 A. Yes.

5 Q. Back when you were in the Anti-Money Laundering Group
6 from the time period of 2005 through 2008, did you have an
7 understanding as to what Petters Company, Inc. was?

8 A. I don't remember.

9 Q. Did you know who Tom Petters was?

10 A. I don't remember.

11 Q. And you don't know if you knew who Tom Petters was back
12 in that time period?

13 A. I don't remember.

14 Q. Have you heard of the concept "know your customer"?

15 A. Yes.

16 Q. You're familiar with that with respect to the Anti-Money
17 Laundering Group at BMO Harris Bank and M&I Bank?

18 A. I'm familiar with it as of now.

19 Q. You were familiar with it back in 2005 through 2008?

20 A. I don't remember.

21 Q. Did you know that part of your job back in 2005 to 2008
22 was to have an understanding of "know your customer"?

23 A. I don't remember.

24 Q. So do you have any understanding as to what "know your
25 customer" means?

1 A. Yes.

2 Q. What does that mean?

3 A. We have a responsibility to know as much of our customer
4 as we can, including -- if it's a business, what kind of
5 business it is. If it's a personal account, what do they do
6 for a living.

7 Q. And when you say "what kind of business it is," what do
8 you mean by that?

9 A. If it's a restaurant, what type of restaurant is it,
10 that type of information.

11 Q. When you were training analysts, do you remember if you
12 trained them on the concept of "know your customer"?

13 A. I don't remember.

14 Q. Let's talk about Petters Company, Inc. back in 2005 up
15 through 2008. Do you recall what Petters Company, Inc.
16 business was?

17 A. I don't remember.

18 Q. Did you deal with the concept of "know your customer" at
19 BMO Harris up until the time you left BMO Harris?

20 A. Yes.

21 Q. Let's talk about your job as an analyst back at M&I
22 Bank. Can you describe generally what you did to
23 investigate alerts in Searchspace for incoming or outgoing
24 wires.

25 A. I can tell you my general process --

1 Q. Um-hum.

2 A. -- was to look at the activity, going through the
3 account as a general whole, holistic review of the customer.

4 Q. "Holistic" is a term that you used?

5 A. I -- I mean, that's the term I'm using right now.

6 Q. What do you mean by "holistic"?

7 A. You weren't just looking at wires or whatever a customer
8 would alert for because there was many different things that
9 a customer could alert for, so you would look at -- if you
10 were looking at their account, you would look generally as a
11 whole on what was going on in their account.

12 Q. So even if -- so let's say, for example, there was an
13 alert for incoming wires. Would you look at everything or
14 would you just look at the incoming wires?

15 A. It was standard practice to look at everything.

16 Q. So take me through generally what you would do, for
17 example, to investigate an alert in Searchspace that alerted
18 for value and volume of -- for incoming wires.

19 A. I can't give you specifics on what I would do for any
20 one alert, just what would happen in general doing any kind
21 of alert. I can do that.

22 Q. Sure, we can speak generally and then we'll go from
23 there.

24 A. You would look at what the customer alerted for; and if
25 they are alerting for their wires, you would, depending

1 on -- it all depended on the alert on how you -- on how you
2 would look at it.

3 Q. Okay. Can you think -- can you think generally what you
4 would do for incoming wires?

5 A. It varied depending on the alert.

6 Q. What do you mean by "depending on" -- I keep asking you
7 about incoming wires and you keep saying it varies depending
8 on the alert. What do you mean by that?

9 A. Every alert that you look at was different.

10 Q. How so?

11 A. It would depend on the circumstances surrounding the
12 alert.

13 Q. What do you mean by that?

14 A. I don't -- I don't -- I mean, I don't remember exactly
15 what I would have done. It was just -- I know that every
16 alert that we would work on would be different.

17 Q. So if we have an alert for incoming wires -- and when I
18 say "for value and volume," you understand what that means?

19 A. I do.

20 Q. And "value" means the amount of the wires; is that
21 right?

22 A. Correct.

23 Q. And "volume" means the number of wires?

24 A. Correct.

25 Q. Okay. So if we have an alert in Searchspace for value

1 and volume of incoming wires, would you take a look to see
2 where those wires were coming from?

3 A. Yes, you would.

4 Q. And do you remember having resources available for you
5 to actually investigate or to look into where those wires
6 were coming from?

7 A. Yes, we had resources.

8 Q. Can you describe what some of those resources were.

9 A. We had -- obviously, the internet was at our disposal
10 and we had bank systems at our disposal.

11 Q. What do you mean by "bank systems"?

12 A. We had a wire system where you could look up the
13 different wires to get more detail on them if there was --
14 if they were available. A lot of times there wasn't
15 additional information available.

16 Q. Well, one of the things you would definitely do was look
17 at the actual incoming wires, correct?

18 A. Not necessarily.

19 Q. There would be times when there would be alerts for
20 incoming wires where you wouldn't look at the actual wires?

21 A. Well, not necessarily.

22 Q. In what instance would you not look at the incoming
23 wires?

24 A. I don't remember.

25 Q. So you believed that during the timeframe of 2005 to

1 2008, if there was an alert in Searchspace for value and
2 volume of incoming wires you may not actually look at the
3 incoming wires?

4 A. I don't remember.

5 Q. Do you recall in the instance of an alert for incoming
6 wires doing research on the entity who was wiring the money
7 into the account?

8 A. I don't remember.

9 Q. And I'm just talking generally do you remember doing
10 that?

11 A. I don't remember any exact alert that I would have
12 worked on during that timeframe.

13 Q. But you do remember generally what your practices were,
14 right?

15 A. I do, yes.

16 Q. And what I'm asking you is generally. I'm not asking
17 you about any specific -- to recall any specific wire.

18 A. Um-hum.

19 Q. I'm saying generally do you recall investigating or
20 looking into the entity who was wiring the money into the
21 account?

22 A. I don't remember.

23 Q. So, for example, do you recall just generally ever
24 looking to see whether or not the entity wiring the money
25 into the account was an actual business?

1 A. I don't remember.

2 Q. And do you recall looking to see whether or not the
3 entity wiring the money into the account, what type of
4 business they were in?

5 A. I don't remember.

6 Q. Would you, when you were investigating an alert for
7 incoming wires, look to see what type of business activity
8 the entity wiring the money was involved in so you would
9 have an understanding as to whether or not those wires that
10 were alerting could be associated with a legitimate business
11 purpose?

12 A. I don't remember.

13 Q. Do you remember using, for example, LexisNexis to look
14 into an entity who was wiring money into an account?

15 A. I remember using LexisNexis, but not -- but I don't
16 remember why I would have looked at LexisNexis, but it was a
17 system that we did have access to. But I -- actually, I
18 don't even remember if we had access to it in 2005 to 2008.

19 Q. Do you recall when you were an analyst that if you had
20 questions about any of the activity that was being alerted
21 in Searchspace, that one of the things you could do was pick
22 up the phone and call a business banker who was managing the
23 customer relationship?

24 A. Yes.

25 Q. And do you recall doing that generally as part of your

1 practice?

2 A. I don't remember.

3 Q. Do you believe that you had done that before with
4 respect to an alert?

5 A. I'm sure I did.

6 Q. And that would have been one of the things that you
7 would have trained analysts on, is that they had the ability
8 to pick up the phone and call an account officer, for
9 example?

10 A. Yes.

11 Q. And do you remember why analysts would pick up the phone
12 and call account officers?

13 A. During the course of our investigation, if there was
14 something that we couldn't explain that we wanted further
15 information, an option was to call the banker and sometimes
16 they knew information and sometimes they did not.

17 THE COURT: Counsel, we'll stop here.

18 MR. COLLYARD: Thank you, Your Honor.

19 THE COURT: Members of the Jury, it is time for us
20 to take our recess.

21 And I have some instructions for you. I will give
22 you these instructions now. They will apply every time we
23 take a recess. I may not give them to you in the full form
24 every time, so I may just reference them and ask you to
25 remember what I have given you as our recess instruction.

1 During this recess and every other recess you must
2 not discuss this case with anyone, including other jurors,
3 members of your family, people involved in the trial, or
4 anyone else. And do not allow anyone to discuss the case
5 with you or within your hearing. Only you have been chosen
6 as jurors in this case. Only you have sworn to uphold the
7 law. No one else has been chosen to do this important work.

8 And you should not even talk among yourselves
9 about the case before you have heard all of the evidence and
10 the case has been submitted to you by me for your
11 deliberations because it may affect your final decision.
12 And if anyone tries to talk to you about the case, please
13 let me know about it immediately.

14 And when I say you must not discuss the case with
15 anyone, I also mean you must not e-mail, send text messages,
16 blog, or engage in any other form of written, oral, or
17 electronic communication, as I instructed you before.

18 Also, do not read any newspaper or written account
19 or watch any televised account or listen to any radio
20 program about this trial.

21 And do not conduct any research, internet
22 research, or consult with any sources about this case, about
23 the people involved in the case, or the general subject
24 matter of the case.

25 As you know, you must keep an open mind free of

1 outside information. Only in this way will you be able to
2 decide the case fairly, based solely on the testimony, the
3 evidence presented in this courtroom, and my instructions on
4 the law.

5 And it would be a violation of your oath for you
6 to base your decision on some reporter's opinion or upon
7 other information you acquire outside the courtroom. If you
8 decide this case on anything else, you will have done an
9 injustice.

10 So it's very important that you follow these
11 instructions. As you know, I may not repeat these things to
12 you before every recess, but please keep them in mind
13 throughout our trial.

14 And I want to thank you for your service. Please
15 be prepared to return to the courtroom tomorrow morning, and
16 we will begin at 8:30. And so if you are in the jury room,
17 where you will be meeting before coming to the courtroom at
18 that time, we will be ready to bring you into the court.
19 Thank you for your service.

20 All rise for the jury. And have a good evening.

21 (Jury excused)

22 **IN OPEN COURT**

23 **(JURY NOT PRESENT)**

24 THE COURT: You may be seated.

25 Is there anything else that needs to be addressed

1 at this time?

2 MR. COLLYARD: Not from plaintiff, Your Honor.

3 MR. GLEESON: No, we're good.

4 THE COURT: Very good.

5 MR. GLEESON: Thank you, Judge.

6 THE COURT: Have a good evening. Thank you,
7 Counsel.

8 MR. COLLYARD: Thank you, Your Honor.

9 (Court adjourned at 5:02 p.m.)

10 * * *

11 We, Lori A. Simpson and Carla R. Bebault, certify
12 that the foregoing is a correct transcript from the record
of proceedings in the above-entitled matter.

13 Certified by: s/ Lori A. Simpson
Lori A. Simpson, RMR, CRR

14
15 Certified by: s/ Carla R. Bebault
Carla R. Bebault, RMR, CRR, FCRR